

(22,860.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 784.

SOUTHERN PACIFIC COMPANY AND OREGON & CALIFORNIA RAILROAD COMPANY, APPELLANTS,

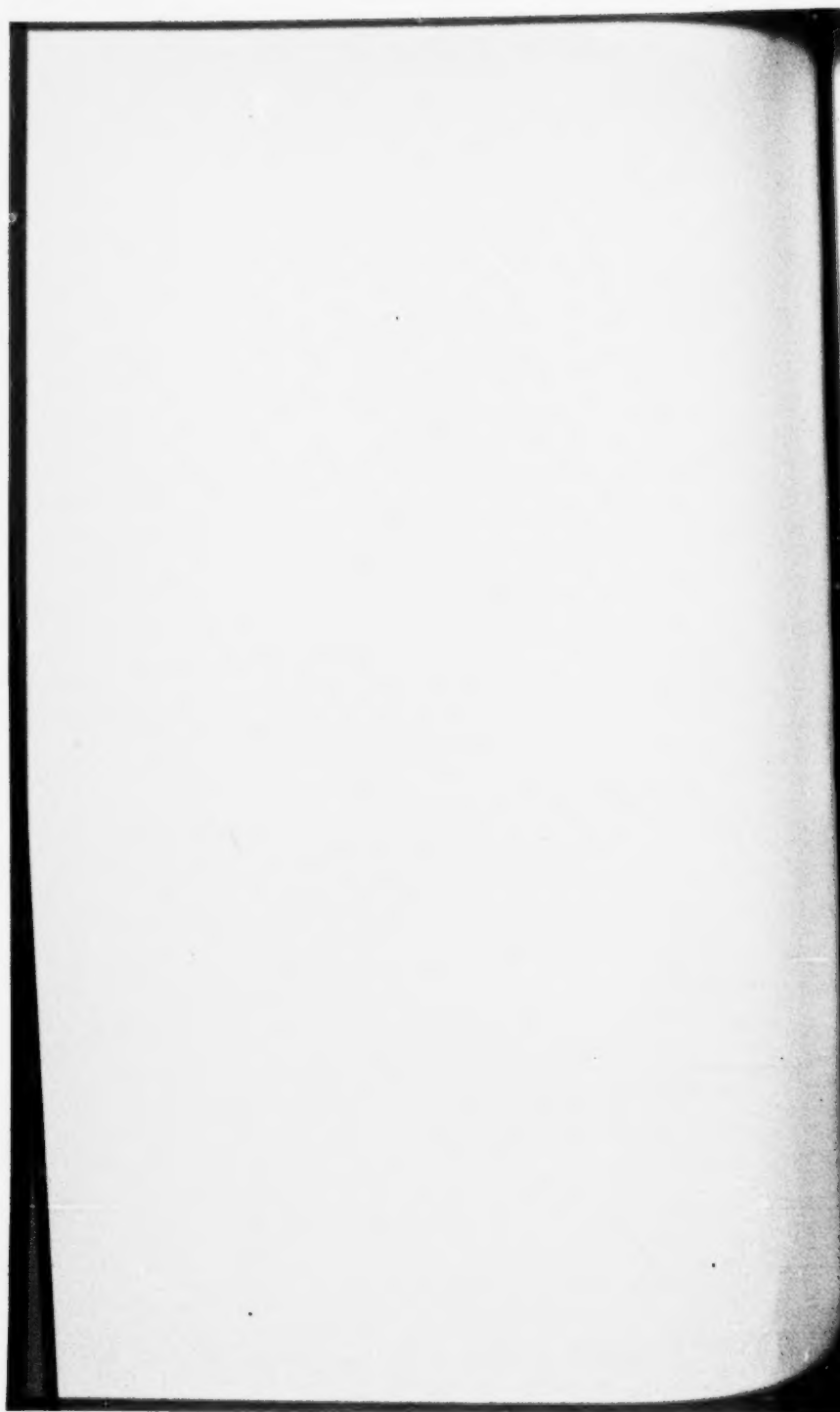
vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, AND FRANK J. MILLER, COMMISSIONERS CONSTITUTING "RAILROAD COMMISSION OF OREGON," AND A. M. CRAWFORD, ATTORNEY GENERAL OF THE STATE OF OREGON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

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Citation on Appeal.

UNITED STATES OF AMERICA,
District of Oregon, ss:

To Thomas K. Campbell, Clyde B. Aitchison, Frank J. Miller, Commissioners constituting "Railroad Commission of Oregon," and A. M. Crawford, Attorney General of the State of Oregon, Greeting:

Whereas, Southern Pacific Company and Oregon & California Railroad Company, have lately appealed to the Supreme Court of the United States from a decree rendered in the Circuit Court of the United States for the District of Oregon, in your favor, and has given the security required by law;

You are, therefore, hereby, cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within sixty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 28th day of July, in the year of our Lord, one thousand, nine hundred and eleven.

A. S. BEAN, *Judge.*

[Endorsed:] No. 3675. United States Circuit Court, District of Oregon. Oregon and California Railroad Company and Southern Pacific Company vs. Thomas K. Campbell, Clyde B. Aitchison and Frank J. Miller, Commissioners constituting "Railroad Commission of Oregon." Citation on Appeal. Filed July 29, 1911. G. H. Marsh, Clerk. By ———, Deputy Clerk.

STATE AND DISTRICT OF OREGON,
County of Multnomah, ss:

Due service of the within citation on appeal is hereby admitted to have been made upon the said Thomas K. Campbell Clyde B. Aitchison and Frank J. Miller, Commissioners constituting Railroad Commission of Oregon, and A. M. Crawford, Attorney General of the State of Oregon, defendants in said suit, and upon us as their solicitors of record, within said State, county and district on this 28th day of July, A. D. 1911, by receiving a copy thereof certified to by Wm. D. Fenton, one of the solicitors for plaintiffs.

Dated at Portland, Oregon, July 29, 1911.

JOSEPH N. TEAL,
Solicitors for said Defendants.

- 2 In the Circuit Court of the United States for the District of Oregon, October Term, 1910.

Be it remembered, That on the 12th day of October, 1910, there was duly filed in the Circuit Court of the United States for the District of Oregon, a Bill of Complaint in words and figures as follows, to wit:

- 3 In the Circuit Court of the United States for the District of Oregon.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Complainants,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, Commissioners Constituting "Railroad Commission of Oregon," and A. M. Crawford, Attorney General of the State of Oregon, Defendants.

Bill of Complaint.

To the Honorable the Judges of the United States Circuit Court for the District of Oregon:

Your orators, Southern Pacific Company, a corporation organized under the laws of the State of Kentucky, and a resident and citizen of said state, and Oregon & California Railroad Company, a corporation organized under the laws of the State of Oregon, and a resident and citizen of said state, bring this, their Bill of Complaint against Thomas K. Campbell, Clyde B. Aitchison, and Oswald West, Commissioners constituting "Railroad Commission of Oregon," and A. M. Crawford, as Attorney General of the State of Oregon, each of whom is a citizen and resident of the State of Oregon, and residing in the District of Oregon and within the jurisdiction of this court, and thereupon your orators show and allege the following facts, to-wit:

I.

- 4 Your orator Southern Pacific Company is now and during all the times hereinafter named has been a corporation duly organized and incorporated under the laws of the State of Kentucky and a citizen of said state, but having an office and place of business at Portland, in the State of Oregon, and duly authorized by law to transact business in the State of Oregon, and as such engaged in the business of a common carrier of passengers and freight for hire over its lines of railways in the states of Oregon, California, and other states and territories of the United States, and as such engaged in intra-state and inter-state commerce, and as such is the lessee in possession and engaged in the operation of those certain lines of railway of the Oregon & California Railroad Company within the State of Oregon hereinafter more particularly described.

II.

That the complainant Oregon & California Railroad Company is now and during all the times hereinafter named has been a corporation duly organized and existing under the laws of the State of Oregon and a citizen of said state, but having an office and principal place of business at Portland, in the State of Oregon, and duly authorized by law to transact business in the State of Oregon, and as such heretofore duly authorized to lease to Southern Pacific Company all of its lines of railway, depots, stations and terminals, rolling stock and other property belonging to its system of railways within the State of Oregon hereinafter more particularly described.

III.

That the defendants Thomas K. Campbell, Clyde B. Aitchison, and Oswald West, during all the times hereinafter named, have been and now are the duly appointed, acting and qualified railroad commissioners of the State of Oregon, and as such known collectively as "Railroad Commission of Oregon," and each, during all the times hereinafter named, has been and now is a citizen of the State of Oregon; and that the defendant A. M. Crawford, during all the times hereinafter named, has been and now is the Attorney General of the State of Oregon, and a citizen of said state; and each of the said defendants resides within said state, and within the jurisdiction of this court.

IV.

That on the 1st day of July, 1887, the Southern Pacific Company and the Oregon & California Railroad Company, being thereunto duly authorized by an Act of the Legislative Assembly of the State of Oregon approved February 16, 1887, duly made and entered into a written lease by the terms of which the Oregon & California Railroad Company leased to the said Southern Pacific Company for the term of forty years from that date, all of its railroad situate in the State of Oregon, known and designated as the "Oregon & California Railroad," with all its branches, together with the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever in use upon or in connection with the said railroad, together with all the branches thereunto belonging, and that thereafter, from time to time, said lease has been so modified as to cover and include additional mileage from time to time acquired or added to said property, so that at the date of the order of the Railroad Commission of Oregon, hereinafter set out, said Southern Pacific Company was in the possession of and operating as a common carrier for hire, under said lease and amendments thereto, all the railroad, rolling stock, depot grounds, stations, and terminals of the Oregon & California Railroad Company within the State of Oregon, and more generally described as follows:

6	Mileage between Portland and the California state line, main line, consisting of approximately....	363 miles
	Mileage from Portland to Corvallis, West Side Division, consisting of.....	97 "
	Mileage from Portland to Airlie, Yamhill Division....	80 "
	Branch,—Sheridan Junction to Sheridan.....	7 "
	Woodburn—Springfield Branch, including Woodburn to Natron	93 "
	Wendling Branch—Springfield to Wendling.....	17 "
	Lebanon Branch—Albany to Lebanon.....	13 "
		<hr/> 670 "

together with the stations and terminals and appurtenances belonging to said lines of railroad, and all of the total value of \$43,594,886.73.

V.

That heretofore, and at the regular legislative session held in the year 1907, the legislative assembly of the State of Oregon undertook to pass an act entitled "An Act to regulate transportation and commerce, and common carriers thereof in this State, and for that purpose, to create a Railroad Commission of Oregon, to provide for the appointment and election thereof, to fix the qualifications, salaries, powers and duties of said Commission, and the members thereof, and authorizing them to make and alter their rules and regulations, and to provide for demurrage and reciprocal demurrage, and for penalties for failure to furnish cars, and to regulate the mode and manner of establishing, making and maintaining railroad crossings and connections, and to prevent unjust rates being imposed, and unjust discrimination by the carriers subject to this Act, and to insure adequate service by them, prescribing penalties for the violation of the provisions of this Act, prescribing the procedure and rules of evidence in relation thereto, making an appropriation to carry out the provisions hereof, and repealing so much of Section

5095, of the Codes and Statutes of Oregon, compiled and annotated by Hon. Charles B. Bellinger and William W. Cotton, as is inconsistent with the provisions of this Act, and declaring an emergency," and that thereafter the legislative assembly of the State of Oregon, at the twenty fifth regular session thereof, attempted to amend Section 33 of said act, and to that end passed Chapter 103, as set out at page 163, Session Laws of Oregon for the year 1909, which said last named act is entitled, "An Act to amend Section 33 of Chapter 53 of the General Session Laws of the State of Oregon for the year 1907" and was filed in the office of the Secretary of State on February 23, 1909, to which said acts reference is here made as if the same were specifically set out; and your orators pray that the said acts may be taken as part of this bill as fully as though embodied herein, which said acts and amendments will be referred to, for convenience, as the Railroad Commission Act.

VI.

That pursuant to the terms of said Railroad Commission Act, the said defendants Thomas K. Campbell, Clyde B. Aitchison, and Oswald West were attempted to be appointed as members of the Railroad Commission of Oregon, referred to in said act, and the said defendants Campbell, Aitchison and West are now and have at all times hereinafter mentioned been attempting to act as the Railroad Commission of Oregon attempted to be created by the said Railroad Commission Act.

VII.

That by the terms of Section 57 of the Oregon Commission Act hereinbefore referred to, it is provided as follows:

"SECTION 57. The Commission shall inquire into any neglect or violation of the laws of this State by any railroad corporation doing business therein, or by the officers, agent, or employes thereof, or by any person operating a railroad, and shall have the power, and it shall be its duty, to enforce the provisions of this Act as well as all other laws relating to railroads and report all violations thereof to the Attorney General; upon the request of the Commission it shall be the duty of the Attorney General or the prosecuting attorney of the proper county to aid in any investigation, hearing or trial had under the provisions of this Act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this Act or the recovery of penalties payable to the State, and of all other laws of this State relating to railroads, and for the punishment of all violations thereof. Any forfeiture or penalty herein provided shall be recovered by an action brought thereon in the name of the State of Oregon in any Court of appropriate jurisdiction. The Commission shall have authority to employ special counsel in any proceeding, investigation, hearing or trial, and to fix their compensation."

That on the 21st day of September, 1910, the said Railroad Commission of Oregon, pursuant to an investigation upon its own initiative, and pretending to observe and follow the said Railroad Commission Act, made an order in words and figures as follows, to-wit:

Before the Railroad Commission of Oregon.

No. F-125.

In the Matter of SOUTHERN PACIFIC COMPANY.

(Investigation on Commission's Own Motion.)

Order.

Now on this 21st day of September, 1910, the above entitled matter comes on before the Commission for final determination, due notice of hearing having been given said Southern Pacific Company and said Company having been furnished with a statement setting

forth the rates investigated, and hearing having been duly had. And the Commission having considered the testimony and proofs taken and the argument of counsel, and being fully advised in the premises, finds—

1. That the said Southern Pacific Company is a corporation organized under and existing by virtue of the laws of the State of Kentucky, and is a common carrier engaged in the transportation of persons and property by railroad between the following points in the State of Oregon, to-wit:

9 From Portland, Oregon to the California state line; from Portland, Oregon to St. Joseph, Oregon; from Portland, Oregon to Corvallis, Oregon; from Sheridan Junction, Oregon to Sheridan, Oregon; from Whiteson, Oregon to Airlie, Oregon; from Woodburn, Oregon to Mohawk Junction, Oregon; from Mohawk Junction, Oregon to Wendling, Oregon; from Mohawk Junction, Oregon to Natron, Oregon; from Springfield Junction, Oregon to Springfield, Oregon; from Albany Junction, Oregon, to Lebanon, Oregon; That as such common carrier said Southern Pacific Company is subject to the provisions of Chapter 53 of the Laws of Oregon for the year 1907 and acts amendatory thereof and supplemental thereto.

2. That the said Southern Pacific Company maintains freight stations in the City of Portland known as Portland (Park Street), East Portland and Portland (Jefferson Street).

3. That the said Southern Pacific Company imposes and charges for the intrastate transportation of freight in carloads and less than carloads, between Portland (Part St.), East Portland and Portland (Jefferson St.) Oregon, and other points upon its said lines of railroad within the state of Oregon the several class rates hereinafter set forth which govern the intrastate transportation of freight between such stations in Portland and said other stations hereinafter named taking class rates according to Section 1 of said Southern Pacific Company's Local and Joint Freight Tariff No. 235-A, issued September 1, 1909, and effective October 9, 1909, O. R. C. No. 434, with its effective supplements. The classification of freight taking class rates is determined by the classification filed by said Southern Pacific Company with said Railroad Commission of Oregon known as The Western Classification No. 48, together with its supplements and reissues, and also by the exceptions to said Classification No. 48, being a reissue of the Western Classification No. 47 and its supplements described in the original statement herein. Said class rates are as follows:

Index No.	Miles from Portland (approximate.)	Rate in cents per 100 pounds.											
		Class											
		1	2	3	4	5	A	B	C	D	E		
5	5	14	12	8	8	8	8	7	6	4	4		
6	7												
7	10	15	13	11	9	8	8	8	6	4	4		
8	11												
9	11												
10	14												
11	15												
12	16												
13	18												
28	58	26	24	21	20	18	17	15	13	9	8	5	5
29	60	26	24	21	20	18	17	15	13	9	8	5	5
30	67	28	25	22	20	18	17	16	13	10	9	8	8
31	71	28	25	22	20	18	17	17	13	10	9	8	8
32	75	28	25	22	20	18	17	17	13	11	10	9	9
33	80												
34	83												
35	85	27	24	23	21	21	21	18	15	11	10	10	10
36	87	27	24	23	21	21	21	19	16	11	10	10	10
37	88	27	24	23	21	21	21	19	15	11	10	10	10
38	89	27	24	23	21	21	21	19	15	11	10	10	10
39	88	32	29	26	25	23	23	19	15	11	10	10	10
40	86	29	26	25	23	23	23	19	15	11	10	10	10
41	85	29	26	25	23	23	23	19	15	11	10	10	10
42	86	29	26	25	23	23	23	19	15	11	10	10	10
43	92	24	23	21	21	21	21	19	16	12	10	10	10
44	97	26	25	23	23	23	23	20	16	12	10	10	10
		29	27	25	25	25	25	21	17	13	11	11	11

Between—1. Portland (Park St.), Oregon, or
2. East Portland, Ore., and—

Willsburg
Milwaukee
Haskell
Laidlaw
Clackamas
Paper Mill
Oregon City
Canemah
Pulp
Reform School
Turner
Marion
Jefferson
Millersburg
Albany
Froman
Fry
Goltra
Cranor
Tallman
Irvineville
Calahan
Lebanon
Tangent
Shedd
Halsey

Rates in cents per 100 pounds.

Index No.	from Portland (approximate).		Between—1. Portland (Park St.), Oregon, or 2. East Portland, Ore., and—											E.
			1	2	3	4	5	A	B	C	D			
45	103	Muddy		34	31	28	27	27	22	18	13	11		
46	106	Harrisburg	40	37	33	30	28	28	22	18	13	11		
47	106	Virgil	40	37	33	30	28	28	23	19	14	11		
48	110	Junction City		37	33	30	28	28	23	19	14	11		
49	116	Luper	45	41	38	34	32	30	24	19	14	12		
50	118	Irving	45	41	38	34	32	30	24	19	14	12		
51	123	Eugene		42	39	36	33	31	25	20	15	12		
52	126	Springfield Junction	48	44	41	37	34	32	26	20	15	12		
53	130	Goshen		44	41	37	34	32	26	20	15	12		
54	135	Creswell		45	42	38	35	33	27	21	15	12		
55	140	Walker		47	43	40	36	34	27	21	16	13		
56	142	Saginaw		48	44	41	37	35	28	21	16	13		
57	144	Cottage Grove		48	44	41	37	35	28	21	16	13		
58	146	Latham		49	45	42	38	35	28	21	16	13		
59	147	Veatch		50	46	42	39	36	29	22	16	13		
60	149	Divide		50	46	42	39	36	29	22	16	13		
61	153	Comstock		51	47	43	40	37	29	22	16	13		
62	155	Curtin		52	48	44	41	38	30	22	17	14		
63	156	Anlauf		52	49	45	41	38	30	22	17	14		
64	158	Safety		52	49	45	41	38	30	22	17	14		
65	159	Leona		52	49	45	41	38	30	22	17	14		
66	160	Kewson		52	49	45	41	38	30	22	17	14		
67	162	Drain		53	49	46	42	38	31	22	17	14		
68	163	Skelly		53	49	46	42	39	31	23	17	14		
69	164	Boswell Springs		53	49	46	42	39	31	23	17	14		
70	167	Yoncalla		55	51	47	43	39	31	23	17	14		

71	173	Rice Hill	56	52	48	44	40	32	23	17	14
11											
72	173	Isadora	56	52	49	45	41	33	23	18	15
73	181	Oakland	59	55	50	46	42	34	23	18	15
74	183	Whitmore	60	56	51	47	43	35	24	18	15
75	185	Sutherland	61	56	52	48	44	35	24	18	15
76	187	Deady	61	56	52	48	44	35	24	18	15
77	189	Wilbur	61	56	52	48	44	35	24	18	15
78	193	Winchester	62	57	53	48	44	35	24	18	15
79	198	Roseburg	64	59	55	50	45	36	25	15	15
80	203	Green	65	60	56	51	46	37	25	16	16
81	209	Dillard	67	61	57	52	48	38	25	16	16
82	213	Round Prairie	68	63	58	53	48	38	26		
83	216	Dole	69	64	59	54	49	39	26		
84	220	Myrtle Creek	70	65	60	55	50	39	26		
85	222	Weaver	71	66	61	56	51	40	27		
86	226	Riddle	72	67	62	56	51	40	27		
87	230	Cornutt	73	67	63	58	53	42	27		
88	235	Salt Creek	76	70	65	59	53	42	27		
89	235	Doe Creek	76	70	65	59	53	42	27		
90	237	Smith Creek	78	70	65	59	53	42	27		
91	239	Nichols	76	70	65	59	53	42	27		
92	241	Table Creek	78	72	68	61	55	44	28		
93	243	Union Creek	78	72	68	61	55	44	28		
94	246	Skidaddle Creek	79	72	68	61	56	44	28		
95	249	West Fork	79	72	68	61	56	44	28		
96	252	Tunnel No. 3	81	74	69	62	57	45			
97	254	Tunnel No. 4	81	74	69	62	57	45			
98	255	Tunnel No. 5	82	75	70	63	58	46	29		

Index No.	Miles from Portland (approximate).	Between—1. Portland (Park St.), Oregon, or 2. East Portland, Ore., and—	Rates in cents per 100 pounds.									
			Class									
			1	2	3	4	5	A	B	C	D	E
99	256	Tunnel No. 6		82	76	70	63	58	46	29		
100	257	Tunnel No. 7		82	76	70	63	58	46	29		
101	259	Reuben		82	76	70	63	58	46	29		
102	261	Lystul		83	77	71	64	58	46			
103	263	Glendale		83	77	71	64	58	46			
104	269	Wolf Creek		85	78	72	65	59	47			
105	276	Leland		88	81	75	67	61	48			
106	280	Tunnel No. 9		88	82	77	68	62	49			
107	283	Hugo		89	82	77	68	62	49			
108	285	Three Pines		90	84	77	70	63	50			
109	288	Merlin		90	84	77	70	63	50			
110	297	Sugar Pine Door & Lbr. Co.		93	86	80	72	65	51			
111	297	Grants Pass		93	86	80	72	65	51			
112	306	Woodvale		96	89	82	74	67	52			
113	313	Gold Hill		98	90	84	76	68	54			
114	319	Gold Ray		100	92	86	77	70	55			
115	320	Tolo		100	92	86	77	70	55			
116	325	Central Point		102	93	87	78	70	55			
117	329	Medford		103	95	88	79	71	56			
118	331	Voorhies		104	96	89	80	72	57			
119	333	Phoenix		104	96	89	80	72	57			
120	336	Talent		105	98	90	81	73	57			
121	342	Ashland		107	99	91	82	74	58			
122	346	Clawson		108	101	93	83	75	58			
123	347	Ayers		109	102	93	83	75	59			
124	351	Steinman		110	103	94	84	76	60			

Index No.	Miles from Portland (approximate).	Between—1. Portland (Park St.), Oregon, or 2. East Portland, Ore., and—	Rate in cents per 100 pounds.									
			Class									
			1	2	3	4	5	A	B	C	D	E
154	100	Twin Buttes		37	33	30	28	27	21	18	13	11
155	104	Rowland		37	33	30	28	28	22	18	14	11
156	108	Priceboro	43	39	35	32	30	28	23	19	14	11
157	112	Wilkins	45	40	37	34	31	29	23	19	14	12
158	116	Coburg	46	41	37	35	31	30	24	19	14	12
159	119	Armitage	46	41	38	35	32	30	24	19	14	12
160	123	Springfield		42	39	36	33	31	25	20	15	12
161	127	Hendricks		44	41	37	34	32	26	20	15	12
162	129	Yarnell		44	41	37	34	32	26	20	15	12
163	131	Spores		45	42	38	35	33	27	21	15	12
164	133	Donna		45	42	38	35	33	27	21	15	12
165	136	Marcola		45	42	38	35	33	27	21	15	12
166	137	Hyland		47	43	40	36	34	27	21	16	13
167	138	Barney		47	43	40	36	34	27	21	16	13
168	140	Wendling		47	43	40	36	34	27	21	16	13
169	125	Douglas		43	40	37	34	32	26	20	15	12
170	129	Natron		43	40	37	34	32	26	20	15	12
13		Seitters	26	21	17	14	13	12	12	11	8	7
195	43	Whitson	26	21	17	14	13	12	12	11	8	7
196	46	Amity	28	23	19	16	15	14	14	12	8	7
197	49	McCoy	28	25	22	19	18	17	16	12	9	8
198	54	Crowley	28	25	22	20	18	17	16	13	9	8
199	59	Derry	28	25	22	20	18	17	17	13	9	8
200	62	Independence	28	25	22	20	18	17	17	13	11	10
201	68				22	20	18	17	17	13	11	10

202	Parker	73	22	20	18	17	17	13	11	10
203	Suwer	75	22	20	18	17	17	13	11	10
204	Wellsdale	78	22	20	18	17	17	13	11	10
205	Calloway	81	22	20	18	17	17	13	11	10
206	Lewisburg	83	22	20	18	17	17	13	11	10
207	Corvallis	89	22	20	18	17	17	13	11	10
216	Galbreath	14	22	20	18	17	17	13	11	10
217	Tualatin	15	12	10	9	9	8	7		
218	Herman	16	12	10	9	9	8	7		
219	Gore	17	22	19	15	12	11	10	5	5
220	Cipole	17	22	19	15	12	11	10	5	5
221	Ford	18	22	19	15	12	11	10	5	5
222	Sherwood	19	22	19	15	12	11	10	5	5
223	Middleton	21	23	19	15	12	11	10	5	5
224	Votaw	22	23	19	15	12	11	10	5	5
225	Frank	22	23	19	15	12	11	10	5	5
226	Rex	24	23	19	15	12	11	10	5	5
227	Springbrook	26	24	19	15	12	11	10	5	5
228	Newberg	28	24	19	15	12	11	10	5	5
229	Dundee Junction	31	24	19	15	12	11	10	5	5
230	Dayton	34	24	19	15	12	11	10	5	5
231	Oak Lawn	35	24	19	15	12	11	10	5	5
232	La Fayette	37	24	19	15	12	11	10	5	5
233	St. Joseph	39	24	19	15	12	11	10	5	5
234	McMinnville	48	32	28	24	20	18	15	12	7
237	Holmes		33	28	24	20	18	15	12	
238	Briedwell		32	29	25	21	19	16	12	
239	Harrison		33	29	25	21	19	16	12	
240	Broadmead		33	29	25	21	19	16	12	
242	Ballston		33	39	25	21	20	20	16	13

Rate in cents per 100 pounds.

Index No.	Miles from Portland (approximate).	Between Portland (Jefferson St.) and—	Class									
			1	2	3	4	5	A	B	C	D	E
243		Sheridan	33	30	26	22	21	20	17	13	9	8
244		Perrydale	33	29	25	21	20	19	16	12	9	8
245		Smithfield	33	30	26	22	21	20	17	13	9	8
247		Dallas	34	30	26	23	22	22	18	14	11	9
248		Cochrane			27	23	23	22	18	14	11	9
249		Monmouth					24	23	19	15	11	10
250		Luckiamute	35	31		24	24	23	20	15	11	10
251		Strong	35	32		24	24	24	20	15	11	10
252		Simpson	35	32		24	24	24	20	15	11	10
253		Airlie	35	32		25	24	24	20	16	11	10
14												
216		Galbreath			11	9	8	8	7	6		4
217		Tualatin		14	12	10	9	9	8	7	4	4
218		Herrman	17	15	12	10	9	9	8	7		4
219		Gore	17	15	12	10	9	9	8	7		4
220		Cipole	17	15	12	10	9	9	8	7		4
221		Ford	18	16	13	11	9	9	8	7		4
222		Sherwood	19	16	14	11	9	9	9	7		4
223		Middleton	20	17	14	11	9	9	9	7		4
224		Votaw	20	17	14	11	9	9	9	7		5
225		Frank	20	17	14	11	9	9	9	7		5
226		Rex	20	17	14	11	9	9	9	7		5
227		Springbrook	21	17	14	11	9	9	9	7		5
228		Newberg	21	17	14	11	9	9	9	7		5
229		Dundee Junction	21	17	14	11	9	9	9	7	8	

- 15 4. That the above enumerated class rates are and each of them is unjust, unreasonable and excessive.

Said Southern Pacific Company also makes and charges in a similar manner numerous other class rates which are fully set out in the said tariff No. 235-A, O. R. C. No. 434, with its effective supplements.

5. That the aforesaid class rates are not arranged upon any uniform or approximately uniform relationship as to each other, and that in consequence thereof the aforesaid rates are unjustly discriminatory as against the several stations and localities above enumerated, and are unjustly discriminatory as between the various classes of commodities taking class rates according to the said Western Classification No. 48.

6. That just and reasonable and non-discriminatory charges for said Southern Pacific Company to charge, collect and impose in the future in lieu of those hereinafter found to be unjust and unreasonable, are the following:

Index No.	Miles from Portland (approximate).	Between—1. Portland (Park St.), Oregon, or 2. East Portland, Ore., and—		Rates in cents per 100 pounds.									
				Class									
				1	2	3	4	5	A	B	C	D	E
16													
5	5	Willsburg	.....	10	9	7	6	5	5	4	3	3	2
6	7	Milwaukee	.....										3
7	10	Haskell	.....	14	12	10	8	7	7	6	4	4	3
8	11	Laidlaw	.....									
9	11	Clackamas	.....									
10	14	Paper Mill	.....									
11	15	Oregon City	.....									
12	16	Canemah	.....									
13	18	Pulp	.....									
28	58	Reform School	.....	25	22	18	17	15	15	12	10	7	4
29	60	Turner	.....	25	22	19	17	15	15	13	10	7	4
30	67	Marion	.....	26	23	20	18	15	15	13	10	8	6
31	71	Jefferson	.....	27	23	20	18	15	15	13	10	8	7
32	75	Millersburg	.....	27	24	20	18	16	16	14	11	8	7
33	80	Albany	.....			21	19	16	16	14	11	8	7
34	83	Froman	.....		26	22	19	16	16	14	11	8	7
35	85	Fry	.....		26	22	19	16	16	14	11	8	7
36	87	Goltra	.....		26	22	19	16	16	14	11	8	7
37	88	Cranor	.....		26	22	19	16	16	14	11	8	7
38	89	Tallman	.....		26	22	19	16	16	14	11	8	7
39	88	Irvineville	.....	31	27	22	19	16	16	14	11	8	7
40	86	Calahan	.....		27	22	19	16	16	14	11	8	7
41	85	Lebanon	.....		27	22	19	16	16	14	11	8	7
42	86	Tangent	.....		27	22	19	16	16	14	11	8	7
43	92	Shedd	.....			24	21	18	18	15	12	9	8

69	Boswell Springs	52	43	37	31	31	24	18	15	12
70	Yoncalla	54	44	38	32	32	25	19	16	13
71	Rice Hill	54	44	38	32	32	25	19	16	13
72	Isadora	56	46	40	33	33	26	20	17	13
73	Oakland	66	56	46	40	33	26	20	17	13
74	Whitmore	67	57	47	40	34	27	20	17	13
75	Sutherland	68	58	48	41	34	27	20	17	14
76	Deady	68	58	48	41	34	27	20	17	14
17										
77	Wilbur	59	48	41	35	35	28	21	17	14
78	Winchester	60	49	42	35	35	28	21	14	14
79	Roseburg	61	50	43	36	36	29	22	14	14
80	Green	63	52	44	37	37	30	22	15	15
81	Dillard	65	53	46	38	38	30	23	15	15
82	Round Prairie	66	55	47	39	39	31	23		
83	Dole	67	55	47	40	40	32	24		
84	Myrtle Creek	68	56	48	40	40	32	24		
85	Weaver	70	57	49	41	41	33	25		
86	Riddle	71	58	50	42	42	33	25		
87	Cornutt	71	58	50	42	42	33	25		
88	Salt Creek	73	60	52	43	43	34	26		
89	Doe Creek	73	60	52	43	43	34	26		
90	Smith Creek	73	60	52	43	43	34	26		
91	Nichols	73	60	52	43	43	34	26		
92	Table Creek	76	62	53	45	45	36	27		
93	Union Creek	76	62	53	45	45	36	27		
94	Skiddadle Creek	77	63	54	45	45	36	27		
95	West Fork	77	63	54	45	45	36	27		
96	Tunnel No. 3	78	64	55	46	46	37			
97	Tunnel No. 4	78	64	55	46	46	37			

Index No.	Miles from Portland (approximate).	Between—1. Portland (Park St.), Oregon, or 2. East Portland, Ore., and—	Rates in cents per 100 pounds.									
			Class									
			1	2	3	4	5	A	B	C	D	E
98	255	Tunnel No. 5.	79	65	65	56	47	47	37	28		
99	256	Tunnel No. 6.	80	66	66	56	47	47	37	28		
100	257	Tunnel No. 7.	80	66	66	56	47	47	37	28		
101	259	Reuben	80	66	66	56	47	47	37	28		
102	261	Lystul	81	67	67	57	48	48	38			
103	263	Glendale	81	67	67	57	48	48	38			
104	269	Wolf Creek	82	68	68	58	49	49	39			
105	276	Leland	85	70	70	60	50	50	40			
106	280	Tunnel No. 9.	86	71	71	61	51	51	41			
107	283	Hugo	87	71	71	61	51	51	41			
108	285	Three Pines	88	73	73	62	52	52	42			
109	288	Merlin	88	73	73	62	52	52	42			
110	297	Sugar Pine Door & Lbr. Co.	91	75	75	64	54	54	43			
111	297	Grants Pass	91	75	75	64	54	54	43			
112	306	Woodville	94	78	78	67	56	56	44			
113	313	Gold Hill	96	79	79	68	57	57	45			
114	319	Gold Ray	98	81	81	69	58	58	46			
115	320	Tolo	98	81	81	69	58	58	46			
116	325	Central Point	99	81	81	70	58	58	46			
117	329	Medford	100	83	83	71	59	59	47			
118	331	Voorhies	102	84	84	72	60	60	48			
119	333	Phoenix	102	84	84	72	60	60	48			
120	336	Talent	104	85	85	73	61	61	49			
121	342	Ashland	105	86	86	74	62	62	49			
122	346	Clawson	106	88	88	75	63	63	50			
123	347	Ayres	107	88	88	76	63	63	50			

124	351	Steinman	108	89	76	64	64	51	6
125	358	Siskiyou	110	90	77	65	65	52	6
126	361	Colestin	111	92	79	66	66	52	6
127	363	Gregory	112	92	79	66	66	52	6
128	39	Townsend	25	22	18	16		9	7
129	40	McKee	25	22	19	14	14	11	7
120	41	Baron	25	22	19	14	14	11	8
18									
131	42	Mount Angel	26	22	19	17		11	9
132	44	Downs	26	23	20	17	15	12	9
133	45	Abiqua	26	23	20	17	15	12	9
134	46	Silverton	27	23	20	17	15	12	10
135	51	Switzerland	28	24	21	18	16	12	10
136	52	Pratum	28	24	21	18	16	12	10
137	56	MacLeay	29	25	22	19	16	12	10
138	59	Shaw	30	26	22	19	16	13	10
139	61	Aumsville	30	26	22	19	17	13	10
140	65	West Stayton	31	27	23	20	17	13	11
141	67	N. Santiam	28	23	20	17	17	14	11
142	69	Shelburne	28	24	21	18	18	14	11
143	71	West Scio	28	24	21	18	18	14	11
144	75	Gaines	25	25	21	18	18	14	11
145	76	Crabtree	25	25	21	18	18	14	11
150	86	Lowson	27	23	20	20	20	16	12
151	90	Plainview	28	24	20	20	20	16	12
152	94	Linn	33	28	24	20	20	16	12
153	96	Brownsville	34	29	24	21	21	16	12
154	100	Twin Buttes	35	29	25	21	21	17	13
155	104	Roland							11

Index No.	Miles from Portland (approximate).	Between—1. Portland (Park St.), Ore. 2. East Portland, Ore. 208. Portland (Jefferson St.), Oregon.	Rates in cents per 100 pounds.									
			Class									
			1	2	3	4	5	A	B	C	D	E
156	108	Priceboro	42	36	30	26	22	22	17	13	11	9
157	112	Wilkins	43	37	31	26	22	22	17	13	11	9
158	116	Coburg	44	38	31	27	23	23	18	13	11	9
159	119	Armitage	45	38	32	27	23	23	18	14	12	9
160	123	Springfield		39	33	28	23	23	18	14	12	9
161	127	Hendricks		41	34	29	24	24	19	14	12	10
162	129	Yarnell		41	34	29	24	24	19	14	12	10
163	131	Spores		43	35	30	25	25	20	15	13	10
164	133	Donna		43	35	30	25	25	20	15	13	10
165	136	Marcola		43	35	30	25	25	20	15	13	10
166	137	Hyland		44	36	31	26	26	21	16	13	10
167	138	Barney		44	36	31	26	26	21	16	13	10
168	140	Wendling		44	36	31	26	26	21	16	13	10
169	125	Douglas		40	33	28	24	24	19	14	12	9
170	129	Natron		41	34	29	24	24	19	14	12	10
19												
195	43	Seiters	24	19	15	12	11	10	10	9	7	6
196	46	Whiteson	25	20	16	13	12	11	11	9	7	6
197	49	Amith	25	21	17	14	12	12	11	10	7	6
198	54	McCoy	26	22	18	15	13	13	12	10	8	7
199	59	Crowley	27	23	19	17	14	14	13	10	8	7
200	62	Derry	27	24	19	17	15	15	13	11	8	7
201	63	Independence										
202	73	Parker			21	19	16	16	14	11	8	7
203	75	Stover			21	19	16	16	14	11	8	7

204	78	Welldale	21	19	16	16	14	11	8	7
205	81	Calloway	21	19	16	16	14	11	8	7
206	83	Lewisburg	21	19	16	16	14	11	8	7
207	89	Corvallis	21	19	16	16	14	11	8	7
216	14	Galbraith	11	9	8	8	7	6		
217	15	Tualatin	11	9	8	8	7	6		
218	16	Herman	16	14	12	10	9	8	7	4
219	17	Gore	17	15	12	10	9	9	8	4
220	17	Cipole	17	15	12	10	9	9	8	4
221	18	Ford	17	15	12	10	9	9	8	4
222	19	Sherwood	18	16	13	11	9	9	8	4
223	21	Middleton	19	16	14	11	9	9	8	4
224	22	Votaw	20	17	14	11	9	9	9	4
225	22	Frank	20	17	14	11	9	9	9	4
226	24	Rex	20	17	14	11	9	9	9	4
227	26	Springbrook	21	17	14	11	9	9	9	5
228	28	Newberg	21	17	14	11	9	9	9	5
229	31	Dundee Junction	21	17	14	11	9	9	9	
230	34	Dayton	21	18	10	10	10	8	6	
231	35	Oak Lawn	21	18	10	10	10	8	6	
232	37	Lafayette	21	18	10	10	10	8	6	
233	39	St. Joseph							7	6
234	42	McMinnville							7	6
237	45	Holmes	25	21	17	14	12	11	10	
238	48	Briedwell	26	22	18	15	13	12	10	
239	48	Harrison	26	22	18	15	13	12	10	
240	51	Broadmead	26	22	18	15	13	12	10	
241	51	Sheridan	26	22	18	15	13	12	10	
242	54	Ballston	27	23	19	17	14	13	10	7
243	58	Sheridan	27	23	19	17	14	13	10	7

Index No.	Miles from Portland (approximate).	Between—1. Portland (Park St.), Oregon, or 2. East Portland, Ore., and—	Rate in cents per 100 pounds.										
			Class										
			1	2	3	4	5	A	B	C	D	E	
244	53	Perrydale	26	22	18	15	13	13	12	10	8	7	E
245	58	Smithfield	27	23	19	17	14	14	13	10	8	7	D
246	63	Thurston	27	24	19	17	15	15	13	11	8	7	C
247	64	Dallas	27	24	19	17	15	15	13	11	8	7	B
248	68	Cochran			21	19	16	16	14	11	8	7	A
249	71	Monmouth					16	16	14	11	8	7	
250	75	Luckiamute	29	26		20	17	17	14	11	9	8	E
251	75	Strong	30	27		21	18	18	14	11	9	8	D
252	77	Simpson	31	27		21	18	18	14	11	9	8	C
253	80	Airlie	32	27		21	18	18	14	11	9	8	B

20 It is therefore ordered, considered and determined, that the said Southern Pacific Company shall cease and desist from charging, imposing and collecting for the intrastate transportation of freight taking class rates under the provisions of The Western Classification and under the exceptions to said Classification aforesaid, the several rates set out in Paragraph 3 hereof, which rates are now charged, collected and imposed by said Southern Pacific Company, and in lieu thereof shall in future charge, collect and impose the several rates respectively set forth in Paragraph 6 hereof, and shall make the necessary changes in its tariffs and file the same with the Commission on or before twenty days from the date of service of a copy of this order upon it.

Nothing in this order contained shall be construed to apply to interstate commerce being carried on by said Southern Pacific Company over any of the lines of railroad aforesaid.

Dated at the Capitol at Salem, Oregon, this 21st day of September, 1910.

RAILROAD COMMISSION OF OREGON,
By THOS. K. CAMPBELL,
CLYDE B. AITCHISON,
OSWALD WEST, *Commissioners.*

Attest:

GEO. O. GOODALL, *Secretary.*

Which was duly served upon said Southern Pacific Company on September 23rd, 1910.

21

VIII.

That the matter and amount in dispute in this suit, exclusive of interest and costs, exceeds the sum of \$2,000, and your orators show that this is a suit arising under the Constitution of the United States and the laws passed pursuant thereto, for that your orators seek, among other things, to enjoin the said defendants Campbell, Aitchison and West, acting as the Railroad Commission of Oregon, and the said Crawford, Attorney General of Oregon, and each of them, from attempting in any manner to enforce the provisions of a certain pretended order of said September 21, 1910, hereinbefore set out, relating to rates and charges for transportation of freight on the railroad lines of your orators, and from instituting any action, suit or proceeding against your orators or either thereof, or their officers, directors, agents, servants or employes on account of any violation of any of the terms or provisions of the said pretended order, or from attempting to enforce in any manner the provisions of the said Railroad Commission Act against your orators, or either of them, or any of their officers, agents or employes on account of any violation thereof, for the reason that the said Act and the said order, and each of them, and all the tariffs, rates, charges, and regulations assumed to be prescribed by said order are in violation of the constitution of the United States and of the State of Oregon, and are likewise in violation of an act of Congress approved February 4,

1887, Chapter 124, 22 Statutes at Large, 379, entitled, "An Act to regulate commerce" and of the various acts amendatory thereof and supplemental thereto, and particularly said act as amended June 18, 1910; and likewise in violation of the Constitution of the State of Oregon, and of said act as more particularly hereinafter set out.

The revenue of your orators derived from the transportation of freight which is interstate in character is large, and the portion thereof affected by the said pretended order of the Railroad Commission of Oregon, if such order be enforced and the rates therein mentioned be put into effect, will largely exceed the sum of two thousand dollars, exclusive of interest and costs.

IX.

That the Union Pacific Railroad Company owns and operates a line of railroad extending from Union Pacific Transfer, in Council Bluffs, Iowa, to Granger in the State of Wyoming, and the Oregon Short Line Railroad Company owns and operates a line of railroad extending from Granger in the State of Wyoming to Huntington in the State of Oregon, and, extending from Union Pacific Transfer east to Chicago, and having physical connection with the line of the Union Pacific Railroad Company are various lines of railroad owned and operated by the Chicago & Northwestern Railroad Company, the Chicago, Rock Island & Pacific Railway Company and the Chicago, Milwaukee & St. Paul Railway Company. At Granger, Wyoming, there is a physical connection between the line of the Union Pacific Railroad Company and that of the Oregon Short Line Railroad Company, and at Huntington, Oregon, there is a physical connection between the line of the Oregon Short Line Railroad Company and that of the Oregon Railroad & Navigation Company, which latter company handles interstate commerce into Portland and East Portland. That because of such physical connections and of the through tariffs published and established by the various companies parties thereto, merchandise and commodities of all kinds have moved from Chicago, Milwaukee, Duluth, St. Paul, Minneapolis, St. Louis and points and places located upon and east of the Missouri River, to Portland, in the State of Oregon. That the Northern Pacific Railway Company is a common carrier engaged in interstate commerce between Duluth and St. Paul, and Portland, Seattle and Tacoma, with physical rail connection into the City of Portland. That the Spokane, Portland & Seattle Railway Company, together with its connections with the Great Northern Railway Company at Spokane, Washington, has a physical all-rail connection into Portland, and is engaged, with its connecting lines, in moving, under its published through tariffs, merchandise and commodities of all kinds, from Chicago, Milwaukee, Duluth, St. Paul, Minneapolis, St. Louis, and other Eastern shipping points in other states of the United States, to Portland, Oregon.

That Southern Pacific Company, your orator, with its connecting carriers, is engaged in interstate commerce, as a common carrier for hire, from New Orleans, La., Ogden, Utah, El Paso, Texas, Los Angeles, San Francisco, and other points in the State of California.

with all-rail connection into the City of Portland, State of Oregon, at East Portland, and is engaged from time to time in moving, according to rates of through tariffs published and established by said company and its connecting lines, interstate commerce consisting of merchandise and commodities of all kinds, from these interstate points in other states than the State of Oregon, to Portland and East Portland, in said State of Oregon, and that all of said railroad companies having through published tariffs, so engaged in interstate commerce, are engaged in the movement of said interstate commerce not only to Portland and East Portland from all said points in said other states, but to all points on the lines of Southern Pacific Company in Oregon, applying to such shipment the local rates in effect and attempted to be modified by said pretended order hereinbefore set out. That all said interstate traffic handled by Southern Pacific Company, or subject to movement over its lines in Oregon, is materially affected by ocean competition on all traffic moving out of Los Angeles and San Francisco, California, and other Bay points, in State of California as well as interior points in the State of California, carrying a local rate sufficient to induce movement to ocean points, which said competition extends to transportation of interstate commerce from said points to Portland and East Portland, Oregon, and all points on the lines of Southern Pacific Company in Oregon, and that the reduction of said class rates so attempted to be effected by the said order directly and immediately affects the movement of all said interstate traffic.

That the tariffs filed with the Interstate Commerce Commission, as required by the said Act of Congress approved Feb. 4, 1887, entitled, "An Act to regulate commerce," and the various amendments thereto and supplements thereof, and particularly said act of June 18, 1910, that prescribe the rates under which said interstate commerce is moved to Portland and East Portland and all points upon lines in Oregon of your orator Southern Pacific Company, are as follows:

Transcontinental Freight Bureau, West Bound, Tariff 4-H, I. C. C. 928, effective October 10, 1910.

Transcontinental Freight Bureau, East Bound, Tariff 2-H, I. C. C. 930, effective October 10, 1910.

Transcontinental Freight Bureau, Competitive Local and Joint Freight Tariff, West Bound, 5-F, I. C. C. 918, effective April 1, 1910.

Southern Pacific Company (Pacific System and Oregon Lines), Local and Joint Freight Tariff No. 161, I. C. C. No. 3021, effective July 1, 1908.

Southern Pacific Company (Pacific System, and Oregon Lines), Local, Joint and Proportional Freight Tariff, No. 162-B, I. C. C. No. 3367, effective September 11, 1910.

Southern Pacific Company (Pacific System, and Oregon Lines) Local and Joint Freight Tariff No. 418, I. C. C. No. 3090, effective January 1, 1909.

Southern Pacific Company (Pacific System, and Oregon Lines),

Local and Joint Freight Tariff No. 203-A, I. C. C. No. 3209, effective July 6, 1909.

25 Southern Pacific Company (Pacific System, and Oregon Lines), Local Joint Freight Tariff No. 576-A, I. C. C. No. 3313, effective January 23, 1910.

Southern Pacific Company (Pacific System, and Oregon Lines) Local and Joint Freight Tariff No. 577, I. C. C. No. 3350, effective September 24, 1909.

Southern Pacific Company (Pacific System, and Oregon Lines), Local and Joint Freight Tariff No. 578-A, I. C. C. No. 3297, effective December 17, 1909.

Southern Pacific Company (Pacific System, and Oregon Lines), Local and Joint Freight Tariff No. 579, I. C. C. No. 3252, effective Sept. 24, 1909.

Southern Pacific Company (Pacific System, and Oregon Lines), Local and Joint Freight Tariff No. 580, I. C. C. No. 3253, effective Sept. 24, 1909.

Southern Pacific Company (Pacific System, and Oregon Lines), Local, Joint and Proportional Freight Tariff No. 464, I. C. C. No. 3339, effective June 12, 1910.

That Southern Pacific Company, Lines in Oregon, Local and Joint Freight Tariff No. 235-A, naming class and commodity rates for transportation of freight between Portland, East Portland, Portland (Jefferson Street), Oregon, and points on Lines of Southern Pacific Company in Oregon, governed, except as otherwise provided in Tariff and as amended, by the Western Classification No. 47 (F. O. Becker's, Agent, I. C. C. No. 5) supplements thereto and reissues thereof, which said rates are attempted to be reduced by the Commission's order F-125, is duly filed with the Interstate Commerce Commission, bearing I. C. C. No. 3265, thereby prescribing the use of these said rates on all interstate traffic moving through Portland and destined to points on the Southern Pacific Company, Lines in Oregon, which said tariffs are duly filed with the Interstate Commerce Commission as required by law, together with tariffs on all interstate commerce moved by all transcontinental railroads aforesaid, moving into Portland and East Portland, Oregon, and carrying interstate traffic destined to points at Portland and

26 East Portland, and on the lines of Southern Pacific Company in Oregon; all of which said tariffs so filed as aforesaid are required to be observed by law. And your orators pray that your Honors will take judicial notice of all said tariffs so filed with the Interstate Commerce Commission, as aforesaid, to which reference is here made as if the same were fully written herein or made a part of this bill of complaint by exhibit or otherwise, and which your orators cannot more fully set out in this bill of complaint without encumbering the record.

And your orators specifically allege and show that the tariffs listed, Southern Pacific Company (Pacific System, and Oregon Lines), Local and Joint Freight Tariffs, hereinbefore set out, show through class and commodity rates from a large number of shipping points in the State of California on the line of Southern Pacific Company,

to all points in Oregon on the lines of Southern Pacific Company in Oregon, which said rates are made up by using the ocean competitive rate from San Francisco and other Bay points, to Portland, adding thereto the local class rates from out of Portland and East Portland to points on the lines of Southern Pacific Company in Oregon, and that any reduction of existing class rates, attempted as in said order of said Railroad Commission, hereinbefore set out, directly, immediately and materially affects, changes and alters the said rates on said interstate shipments, thereby reducing said interstate rates to the extent of the said attempted reduction of the said class rates so attempted to be ordered into effect by said order F-125. That the said order F-125, so attempted to be made as aforesaid, if put into effect, will materially and directly affect all interstate freight traffic of your orators or all other common carriers moving

27 traffic to Portland and East Portland, and to points on the line of Southern Pacific Company in Oregon, and thereabout your orators further allege and show that to comply with the said order aforesaid, so attempted to be made by the said Railroad Commission, reducing class rates from Portland to points on the line of Southern Pacific Company in Oregon, would materially affect and reduce interstate rates.

And your orators would illustrate and specifically set forth and show that class rates from Portland south, covered by said order, are used as basing rates on traffic originating beyond Portland, and form a portion of the through rate on said traffic having origin beyond the boundaries of the State of Oregon, and destined to points on Southern Pacific Company, Lines in Oregon, and that there is but one exception in the application of class rates from Northern California points, north of Marysville, to Southern Oregon points, and with this exception, all traffic subject to application of class rates, originating in California south of Marysville, and in every other state of the United States, destined to points on the Southern Pacific Company, Lines in Oregon, is transported at through rates obtained by adding to the rate applying to Portland, the class rate from Portland to destination.

Some of the tariffs filed with the Interstate Commerce Commission, applicable to said interstate business of your orators, provide rates on traffic destined to points on the Southern Pacific Company, Lines in Oregon, specifically authorize the addition of class rates from Portland to destination, over established routes which do not require that the traffic be transported through Portland, namely:

Transcontinental Freight Bureau, West-Bound, Tariff No. 4-H I. C. C. No. 928, naming local and joint class rates, governed (See exception 2, page 29) by Western Classification No. 48 (I. C. C. No. 6 of F. O. Becker, Agent), supplements thereto or reissues thereof, and Local, Joint and Proportional Commodity Rates from Eastern shipping points designated on pages 2 to 15 inclusive, to "North Pacific Coast Terminals" designated on page 16, and points in Oregon and Washington, designated on pages 17 to 22, and 24 to 28 inclusive, effective October 10, 1910, which tariff, on page 26, provides bases for through rates to points named along the

Southern Pacific Company, Lines in Oregon, and shows the present class rates now in effect as arbitraries to be added to the class or commodity rates applying to Portland, and also designates the gateways or routes over which the traffic shall move, to-wit:

"Will apply only via Gateways 32-A, 36, 41-A, 41-B, 41-C, 44 or 66, as shown on pages 30 to 34, inclusive," and the Gateways referred to are as follows:

32-A, Northern Pacific Ry. to Wallula, Wash., Oregon Railroad & Navigation Co. to Portland, Ore., Southern Pacific Co. (Lines in Oregon) to destination.

36. Northern Pacific Ry. to Portland, Ore., thence Southern Pacific Co. (Lines in Oregon) to destination.

41-A, Union Pacific R. R. Granger, Wyo., Oregon Short Line R. R., Huntington, Ore., Oregon Railroad & Navigation Co., Portland, Ore., thence Southern Pacific Co. (Lines in Oregon) to destination.

41-B, Chicago, Rock Island & Pacific Ry. to Pullman, Colo., Union Pacific R. R., Granger, Wyo., Oregon Short Line R. R., Huntington, Ore., Oregon Railroad & Navigation Co. to Portland, Ore., thence Southern Pacific Co. (Lines in Oregon) to destination.

41-C, Chicago, Burlington & Quincy R. R. or Atchison, Topeka & Santa Fe Ry. to Denver, Colo., Union Pacific R. R., Granger, Wyo., Oregon Short Line R. R., Huntington, Ore., Oregon Railroad & Navigation Co. to Portland, Ore., thence Southern Pacific Co. (Lines in Oregon) to destination.

44. Union Pacific R. R., or Chicago, Burlington & Quincy R. R. to Denver, Colo., or Chicago, Rock Island & Pacific Ry. to Denver, Colorado Springs, or Pueblo, Colo., in connection with Denver & Rio Grande R. R. to Salt Lake City, Utah, Oregon Short Line R. R., to Huntington, Ore., Oregon Railroad & Navigation Co. to Portland, Ore., thence Southern Pacific Co. (Lines in Oregon) to destination, or Union Pacific R. R., or Chicago, Burlington & Quincy R. R. to

29 Denver, Colo., or Chicago, Rock Island & Pacific Ry. to Denver, Colorado Springs or Pueblo, Colo., in connection with Colorado Midland Ry. and Denver & Rio Grande R. R. to Salt Lake City, Utah, Oregon Short Line R. R. to Huntington, Ore., Oregon Railroad & Navigation Co. to Portland, Ore., thence Southern Pacific Co. (Lines in Oregon) to destination.

66. Via El Paso, Tex., or Deming, N. M., or via Bakersfield, Fresno or Stockton, Cal., thence via Southern Pacific Co. (Pacific System and Lines in Oregon).

And it is also provided on page 26 of said Tariff, as follows:

N. B.—(Applies only on traffic routed via Gateway 66 designated on page 34.) When no specific through rate or specific method of making through rate, to intermediate points on line of Southern Pacific Co., named on pages 24 and 25, is provided, the rate to such intermediate points will be made by adding to the Terminal rate shown as applying to the points designated as "Terminals," viz: Portland or East Portland, Ore., whichever is nearest point of destination of shipment, the local rate published for use upon Interstate

traffic from such nearest "Terminal" point named to point of destination.

And therefore your orators allege and show that the through interstate rate from Eastern shipping points to points on Southern Pacific Company, Lines in Oregon, except as otherwise provided, are made by adding to the terminal rates shown as applying to the points designated as terminals, by way of Portland or East Portland, Oregon, the local rate published for use upon interstate traffic, which said local rates are present class rates from such terminal points named, viz. Portland and East Portland, to points of destination, and such interstate traffic may be transported from said Eastern points to destination by way of El Paso, Texas, or Deming, New Mexico, or via Bakersfield, Cal., Fresno, Cal., or Stockton, Cal., thence via Southern Pacific Company, Pacific System, Lines in Oregon, and as illustrating such movement, your orators show that the present through rates on syrup from New York City, New York, to Eugene, Oregon, are made by adding to the terminal rates shown in Transcontinental Freight Bureau, West-Bound, Tariff No. 4-H, as aforesaid, namely, \$1.25 per 100 lbs. less than carloads, and \$.85 per

100 lbs. carloads, the local class rates governed by Western
30 Classification No. 48, from Portland or East Portland to Eugene, of \$.36 per 100 lbs. less than carloads, and \$.33 per 100 lbs. carloads, making through rates of \$1.61 per 100 lbs. less than carloads, and \$1.18 per 100 lbs. carloads. And shipments may move via any one of the routes designated as 32-A, 36, 41-A, 41-B, 41-C, 44, or 66. And your orators show and allege that the effect of the said pretended order of the said Railroad Commission, F-125, if put into effect on the through interstate rate on syrup from New York to Eugene, would reduce the less than carload rate from \$1.61 per 100 lbs. to \$1.53 per 100 lbs., and reduce the carload rate from \$1.18 per 100 lbs. to \$1.08 per 100 lbs. by reducing the local rates published for use upon interstate traffic from Portland and East Portland to Eugene, from \$.36 per 100 lbs. less than carloads, and \$.33 per 100 lbs. carloads, to \$.28 less than carload and \$.23 per 100 lbs. carload, respectively.

And your orators would further show and allege by way of illustration of the effect of the said pretended order of said Railroad Commission, if allowed to go into effect as applied to interstate rates, that interstate traffic is moved under Southern Pacific Company (Pacific System, and Oregon Lines) Local, Joint and Proportional Freight Tariff No. 162-B, I. C. C. No. 3367, which names local, joint and proportional class and commodity rates between San Francisco, Oakland, Oakland Wharf, Stockton, San Jose, Marysville, Sacramento and other points in California and Nevada on lines of Southern Pacific Company, Pacific System, and Portland, Oregon, East Portland, and other points in Oregon on Lines of Southern Pacific Company, which tariff was effective September 11, 1910, and on file with the Interstate Commerce Commission, which said Tariff must be observed by your orators and their connecting carriers affected thereby, and is an interstate tariff naming through rates from
31 San Francisco and points named, to points on Southern Pacific Company, Lines in Oregon, using competitive ocean

rates to Portland and East Portland, plus class rates from Portland and East Portland to destination.

And your orators pray that the court will take judicial notice and knowledge of the said Tariff last hereinabove described, as if the same were fully written herein and made a part of this bill of complaint.

And your orators allege and show that in the third column of said Tariff is shown the basing rate to Portland, Ore. (Park St.) to be used only for basing purposes in conjunction with rates to points south of Portland (Park St.) Ore., shown on pages 60 to 64 inclusive, except as otherwise provided, and that the rates shown on pages 60 to 64 inclusive are present class rates from Portland, Oregon, to all points on Southern Pacific Company, Lines in Oregon, except to points competitive with Willamette River steamers, such as Salem, Independence, Albany & Corvallis. The class rates shown are one cent per 100 lbs. lower than regularly published class rates from Portland and East Portland, to Salem, Independence, Albany and Corvallis. And thereabout, your orators show and allege, that taking the rates on syrup for example, the present rates from San Francisco to Eugene are \$.71 per 100 lbs. less than carload, and \$.44 $\frac{1}{4}$ per 100 lbs. carloads, which are made by combining on Portland, using the ocean rate San Francisco to Portland, plus the local class rates Portland to Eugene, and therefore your orators aver and allege that the effect of the Commission's order F-125 would be to reduce the less than carload rate on syrup from San Francisco to Eugene, from \$.71 per 100 lbs. to \$.63 per 100 lbs., and to reduce the carload rate on syrup from \$.44 $\frac{1}{4}$ per 100 lbs. to \$.34 $\frac{1}{4}$ per 100 lbs., a reduction in the carload rate of 23%, notwithstanding that rail service involves a haul of 648 miles from San Francisco to Eugene.

Your orators would further show and allege that there is a Southern Pacific Company (Pacific System, and Oregon Lines) Local Freight Tariff No. 161, I. C. C. No. 3021, naming class rates for transportation of freight between San Francisco, Oakland, Stockton, San Jose, Niles, Sacramento and Marysville, Cal., also other points on lines of the Southern Pacific Company in California, as shown therein,—and Portland and East Portland and other points on lines of the Southern Pacific Company in Oregon, as shown therein, effective July 1st, 1908, which said Tariff your orators pray that the court will take judicial knowledge and notice of, as if the same were fully written herein, and which said Tariff contains the names of over 200 stations in California, from which direct through class rates apply to points on Southern Pacific Company, Lines in Oregon. All of which class rates, except as between Northern California and Southern Oregon points, are made by combining on San Francisco and Portland, using the low ocean rates between San Francisco and Portland to make the through rate from point of origin to point of destination, and that in addition to the interstate tariffs heretofore mentioned, your orators particularly show Tariff called Southern Pacific Company (Pacific System, and Oregon Lines) Local and Joint Freight Tariffs No. 577, I. C. C. No. 3250, effective

September 24, 1909, naming rates for transportation of sugar from San Francisco, Oakland, San Jose, Sacramento, Stockton, and 200 other points in California on lines of Southern Pacific Company, to Portland, East Portland, Oregon, and other points in Oregon on lines of Southern Pacific Company, and that thereby also direct through rates are shown in this tariff from points of origin to point of destination, and are made by adding to the ocean rates from San Francisco to Portland, the class rates from Portland to destination.

Your orators also allege and show that there is a Southern Pacific Co. (Pacific System, and Oregon Lines) Local and Joint Freight Tariff No. 578-A, I. C. C. No. 3297, effective September 17, 1909, naming rates for transportation of sale from San Francisco, Oakland, San Jose, Stockton, Sacramento, and 200 other points in California on lines of Southern Pacific Company, to Portland, Oregon, and other points in Oregon on lines of Southern Pacific Company, which said tariff is duly filed with the Interstate Commerce Commission, and of which your orators pray that the court may take judicial notice and knowledge, as if the same were fully written herein; and by which tariff direct through rates from point of origin to point of destination are shown, which are likewise made by adding to the ocean rates from San Francisco to Portland, the class rates from Portland to destination.

X.

Your orators further complain, allege and say that on June 30, 1909, and since, the capital stock of the Oregon & California Railroad Company consisted of preferred stock of the par value of \$12,000,000 and common stock of the par value of \$7,000,000, and there was outstanding at that date, and since, bonded indebtedness secured by first mortgage upon the property of the said Oregon & California Railroad Company, in bonds of the par value of \$17,745,000, and there was due Southern Pacific Company, in the operation of said properties of the Oregon & California Railroad Company under the lease to said Southern Pacific Company, as a deficit, the sum of \$3,207,008.37 after applying all of the receipts from the operation of said properties to the payment of operating expenses, taxes, interest on bonded debt, and other reasonable and legitimate expenses necessarily attending the operating of said properties, which said deficit was on June 30, 1906, the sum of \$6,222,037.2-; that the said capital stock of the Oregon & California Railroad Company, so outstanding as aforesaid, represents to the extent of \$12,000,000 thereof the bonded and other indebtedness of a portion of said properties outstanding at or about the time of the completion of the first 198 miles of said railroad from Portland to Roseburg, which said sums were used by said Oregon & California Railroad Company for construction of said railroad or redemption of valid outstanding bonds, from which were received funds that entered into the construction of said property, and that at said date there was accrued upon said outstanding indebtedness, interest aggregating \$7,000,000 that had accrued upon said bonded and other

indebtedness and was due the creditors of said Oregon & California Railroad Company, and that said common stock of the par value of \$7,000,000 was issued in payment of said unpaid accrued interest; that the said bonded indebtedness so outstanding and secured by first mortgage of July 1, 1887, executed by the Oregon & California Railroad Company to the Union Trust Company of New York, was created for the purpose of reducing part of the outstanding indebtedness of the said Oregon & California Railroad Company and for the purpose of construction, extension, addition and betterment to the property of said Oregon & California Railroad Company, as original capital, and was used in the extension, construction and betterment of said properties or any redemption of valid outstanding bonds then existing against said properties as security for moneys that had theretofore gone into the acquisition or construction or betterment of said properties, so that on September 21, 1910, when the said

35 Railroad Commission of Oregon attempted to make said pretended order, as aforesaid, the said Oregon & California Railroad Company was the owner of the said lines of railway and other properties used in connection therewith, and the same was then and there under lease to the Southern Pacific Company of date July 1, 1887, and subsequent modifications thereof, whereby said Southern Pacific Company was given the right to possess, maintain, operate and use the said properties and to receive the rents, uses and benefits thereof for the term of forty years from July 1, 1887; that by the terms of said lease it was provided that the said Southern Pacific Company would keep the said leased property in good order, condition and repair, operate, maintain, add to, and better the same at its own expense, pay all taxes legally assessed against the same, or levied thereon, and pay the interest as it should mature on such of the first mortgage bonds of said Oregon & California Railroad Company secured by said mortgage of date July 1, 1887, executed to the Union Trust Company of New York, as might be issued in respect of the then existing lines of the Oregon & California Railroad Company or of the extension then under construction of its main line to the boundary between Oregon and California, or as might be thereafter guaranteed by said Southern Pacific Company, and that it would, on the first day of May in each year during the continuance of said lease, pay to the Oregon & California Railroad Company such balance, if any, of the net earnings or income received by said Southern Pacific Company from said leased premises with the appurtenances for the year ending on December 31st next preceding, as should remain in its hands after all charges and expenses incurred by the said Southern Pacific Company under said lease and all payments for taxes and interest and all current fixed charges of the Oregon & California Railroad Company and all indebtedness of said Oregon & California Railroad Company to said Southern Pacific Company are paid. And by which lease it

36 was further provided that if such balance of net earnings or income received by said Southern Pacific Company from said leased premises for any year, which by said lease would be and become payable by said Southern Pacific Company to said Oregon

& California Railroad Company, should exceed the amount of seven percentum upon the par value of the then existing preferred stock of the Oregon & California Railroad Company, and six per cent per annum upon the value of the then existing common stock of said Oregon & California Railroad Company, then and in that event said Southern Pacific Company should be entitled to and should retain to itself for its own use any and all excess of such balance of net earnings and income over and above the amount of seven per cent per annum upon the par value of the preferred stock and six per cent per annum upon the par value of the common stock of said Oregon & California Railroad Company. That in and by said lease it was further agreed that the Southern Pacific Company would guarantee the payment of the principal and interest of such of the bonds of the issue mentioned in said lease as might be issued in respect of the then existing lines or the extension then under construction of its main line to the boundary between Oregon and California and such further bonds of said issue as the Oregon and California Company might during the existence of said lease request the Southern Pacific Company to guarantee.

That thereupon and on July 1, 1887, the said Southern Pacific Company entered into the possession of the then existing railroad and appurtenances thereunto belonging then owned by the Oregon & California Railroad Company and as such continued to be and remained in the possession of said property and of all extensions and additions and renewals thereof under said lease and amendments thereof, and has honestly and faithfully and carefully kept

37 a full account of the gross operating revenues, receipts and income of said property, and every part thereof, and has carefully and honestly and faithfully kept an account of all the expenditures incident to said property, including operating expenses, taxes, and interest upon bonded indebtedness, and other reasonable and necessary expenses, and that notwithstanding the said Southern Pacific Company has so operated the said properties under said lease, and the same has been honestly, economically and carefully managed and operated, the said properties have never at any time yielded any net income applicable to the payment of dividends upon said capital stock or any part thereof at any time during said lease, and the said properties do not now yield, under existing rates and tariffs, any net revenues from which any payment can be made by way of dividend upon said capital stock or any part thereof. That notwithstanding the faithful, careful and economical management and administration of said properties by said Southern Pacific Company under reasonable tariffs for the movement of freight and passenger traffic during all of said time, there was a constantly increasing deficit, resulting from said operation, due and owing to the Southern Pacific Company, and the same reached, on June 30, 1906, the extraordinary figure and sum of \$6,222,037.2-, which sum was reduced for the year ending June 30, 1909, to the sum of \$3,227,008.37, as aforesaid, and if existing rates, state and interstate, upon freight and passenger business, are permitted to remain in effect, and traffic and business continue to improve, said deficit will be grad-

ually reduced hereafter so that a fund may be created with which to retire a portion of said outstanding bonded indebtedness or at the election of said Oregon & California Railroad Company to be distributed in dividends upon said stock.

Your orators further show and allege that the properties of the Oregon & California Railroad Company are of the reasonable value of a sum representing the outstanding bonded indebtedness and the deficit, as aforesaid and of the capital stock of said company, and that your orators are entitled to receipts and earnings from the operation of said properties sufficient to pay a reasonable and fixed sum as annual interest upon said indebtedness and as a dividend upon said stock amounting to at least five per cent. per annum upon said bonded indebtedness and at least six per cent. per annum upon said unsecured indebtedness and a dividend of at least six per cent. or seven per cent. per annum upon said capital stock.

Your orators further allege and show that the receipts and disbursements of said property under said lease for the year ending June 30, 1902, and to the year ending June 30, 1909, are as follows:

Receipts.

Year ending June 30, 1902,	gross earnings.....	\$3,509,901.37
" " " 1903,	" "	4,004,983.14
" " " 1904,	" "	4,308,215.05
" " " 1905,	" "	4,390,401.10
" " " 1906,	" "	5,891,087.67
" " " 1907,	" "	6,451,050.00
" " " 1908,	" "	6,918,414.00
" " " 1909,	" "	7,104,081.00

Disbursements.

" " " 1902,	expenditures.....	3,734,380.40
" " " 1903,	" "	4,120,413.08
" " " 1904,	" "	4,319,970.87
" " " 1905,	" "	5,321,301.39
" " " 1906,	" "	5,956,399.61
" " " 1907,	" "	6,128,729.00
" " " 1908,	" "	5,968,601.00
" " " 1909,	" "	5,839,698.00

Your orators further show that the operating revenues for the year ending June 30, 1909, amounted to the sum of \$6,998,949.57, of which \$2,915,434.70 were intrastate and \$3,804,613.65 were interstate; that the intrastate passenger revenue was \$1,507,107.24 and interstate passenger revenue \$1,606,131.95; that the intrastate freight earnings were \$1,321,216.72, while the interstate freight earnings were \$2,168,825.86 and that by reason of the premises your orators aver and allege that the interstate freight business is about sixty-four per cent. more than the

intrastate freight business, and thereabout your orators aver and allege that if the pretended order of the Railroad Commission of date September 21, 1910, shall go into effect, your orators will suffer an annual loss of intrastate business, upon business affected by said order, to the amount of \$120,859.32 and will suffer an annual loss of intrastate and interstate business combined, necessarily and directly affected by said order, to the amount of \$156,072.48, amounting in the aggregate to the sum of \$276,931.80.

And your orators further allege and show that the existing local rates affected by said order of September 21, 1910, are reasonable and just and are made as low as the situation of said properties and the competitive conditions of the business, both intrastate and interstate, will permit or allow, and the said compensation charged upon said existing tariffs is reasonable and just and affords to your orators but slight compensation above the cost of the service; that the said decrease attempted to be made by said pretended order, involving said class rates hereinbefore set out, if enforced will deprive your orators of said large sums of annual revenues and compel them to give the use of said properties without reasonable or just compensation for such services and will deprive your orators of the said properties without due or reasonable compensation, and will compel your orators to increase other rates upon traffic not affected by said order, and particularly the products of the soil—forest and farm, many of which now receive and enjoy terminal rates, including such commodities to be sold and consumed
40 in the markets of the world, thereby compelling your orators to discriminate against such last named products to the great injury of your orators and of the public.

Your orators further allege and show that the largest decrease in said class rates affects class 4 and 5, and that under said classes, consisting of staples, particularly groceries and hardware, are largely moved both intrastate and interstate, and that the decrease as to such commodities under such classes, so attempted to be made by said order, approximate about twenty per cent of the existing rates, and that the said decrease will be largely, if not mainly, of benefit only to jobbers and dealers in such staple products, and your orators aver and allege that the said dealers and jobbers in said commodities, during several years last past, have made and are now making large and excessive profits under said existing class rates and that the said pretended order, if put into effect, will still further increase the profits of said dealers and jobbers at the expense of your orators and of the public at large.

XI.

Your orators further complaining allege and show that on June 30, 1909, the Oregon & California Railroad Company owned 666.07 miles of main line track, beside 114.06 miles of side track, with the usual stations and terminals incident to operation, all of which property is devoted to public use and upon which your orators are entitled to just and reasonable return and upon which your orators have never received, for the stockholders of the Oregon & California Railroad Company, anything in dividends; that the said prop-

erties are so situated physically that your orators are compelled to maintain and operate one line of railroad from Portland to Corvallis

by way of Forest Grove, and another line of railroad from
41 Jefferson Street in the City of Portland by way of Newberg,

Yamhill County, McMinnville and Dallas to Airlie in Polk County, Oregon, with a branch line from Sheridan Junction, Oregon, in Yamhill County, Oregon, to Sheridan, which said lines lie West of the Willamette River and closely parallel to the same, and come in competition not only with common carriers on said Willamette River but with the main and branch lines of your orators situated on the East side of the Willamette River in said State; that your orators have been compelled to maintain and operate a main line from Portland to the boundary line between the states of Oregon and California, through Salem, Albany, Eugene, Roseburg, Grants Pass, Medford and Ashland, over two mountain ranges in a mountainous, difficult and expensive country in which to operate and maintain railroads, and particularly over the Siskiyou Mountains for all interstate business coming from or going to California points and all points beyond. And at the same time your orators have been compelled to operate and maintain a branch line from Woodburn to Natron in Lane County, Oregon, a distance of about 93 miles, practically in competition with the main line of your orators and in competition with common carriers on the Willamette River to points as far South as Albany and Corvallis in said State; that the said four lines of railroad so operated and maintained are situated geographically within the first 125 miles South from Portland in a valley or country not exceeding 60 miles in width with a navigable river in the center thereof, navigable for common carriers by boat to Albany and Corvallis aforesaid, in open and active competition with your orators; and that in addition to the foregoing physical situation of the properties of your

42 orators the said City of Portland is located on the Willamette River 12 miles from the Columbia River and at the head of ocean navigation for deep sea and coast-wise vessels owned by common carriers engaged in the business of carrying freight and passengers from San Francisco, Los Angeles and other Pacific Ocean ports to Portland in competition with the business of your orators. And your orators further show and allege that in addition to the competition hereinbefore described the Oregon Electric Railway Company is actively operating and maintaining in competition with the line of railroad of your orator an interurban electric line for the carriage of freight and passengers from Portland to Salem and from Portland to Forest Grove with trans-continental connection with the Great Northern Railway Company and the Northern Pacific Railway Company having terminals at Portland; and said Oregon Electric Railway Company is about to extend its interurban line to McMinnville, Yamhill County, Oregon, and to Albany, Linn County, Oregon, and to Eugene, Lane County, Oregon, and will thereby subject your orators to active and close competition for all lines of business.

And your orators further allege and show that approximately the

less than carload merchandise tonnage received at points on lines of the Southern Pacific Company in Oregon for one year is 99,264 tons, yielding a revenue of \$777,984.00, all of which will be directly affected by the application of class rates, and there is upon said one year's business approximately 15,203 tons of carload commodities yielding a revenue of \$210,888.82 that will likewise be affected by the application of said class rates, or a total of 114,467 tons yielding a revenue of \$1,088,872.82 or about 39% of the total tonnage and 74% of the total revenue, the whole of which is upon freight received; that the total freight revenue for the year ending June 30, 1909, was \$3,490,042.58, of which \$1,088,872.82 was revenue derived from freight received affected by the application of class rates amounting to 31% of the total freight revenues of your orators, the Southern Pacific Company and the Oregon & California Railroad Company; Your orators further show and allege that the percentage of forwarded traffic affected by class rates, for which your orators at this time can give no accurate figures, would materially increase this percentage.

XII.

Your orators further allege and show that the Oregon & California Railroad Company was so incorporated under the laws of the State of Oregon on March 16, 1870, and that all of the railroad properties by it constructed, acquired and now owned, were constructed, acquired and owned pursuant to its articles of incorporation, and the articles of incorporation under the laws of the State of Oregon, of its predecessors in interest and under and by virtue of the constitution of the State of Oregon and the laws of said State, and particularly of Section II, Article XI of the constitution of said State, and Section XXXVI of Chapter VII of the Miscellaneous laws of the State of Oregon, being Section XXXIV of the Act of the Legislative Assembly of the State of Oregon approved October 14, 1862, being an act providing for private corporations and the appropriation of private property therefor, which said Section II Article XI of the Constitution of said State is as follows:

"Corporations may be formed under general laws but shall not be created by special laws except for municipal purposes.

"All laws passed pursuant to this section may be altered, amended or repealed, but not so as to alter or destroy any vested corporate rights," and which said Section XXXIV of said act of the

44 Legislative Assembly approved October 14, 1862, is as follows:

"Every corporation formed under this act for the construction of a railroad, as to such road shall be deemed common carriers, and shall have power to collect and receive such tolls or freights for transportation of persons or property thereon as it may prescribe."

That by virtue of said articles of Incorporation the Oregon & California Railroad Company and its predecessors in interest incorporated under the laws of the State of Oregon, each of which said railroad companies was formed under said act for the construction of railroads in the State of Oregon, the said Oregon & California

Railroad Company became vested with the right to collect and receive such tolls or freights for transportation of persons or property on said railroads as said Oregon & California Railroad Company might prescribe; and that thereunder the Southern Pacific Company by virtue of the said lease and amendments thereto succeeded to all the franchises and rights of the said Oregon & California Railroad Company and its predecessors in interest under said articles of incorporation and under said constitution and statutes aforesaid; and that the said pretended Railroad Commission Act hereinabove referred to and the said pretended order of the said Railroad Commission are, and each of them is, in violation of said Section II Article XI and of said Section XXXIV of the said Act of the Legislative Assembly approved October 14, 1862, and impairs the vested rights of your orators in violation of the constitution of the State of Oregon and in violation of the constitution of the United States, in that the said pretended Railroad Commission Act and the said pretended order of commission impair the obligation of the contract made with your orators under the said provision of the constitution of the State of Oregon and the said Section

45 XXXIV of said Act as aforesaid, and under the said Articles of Incorporation of the Oregon & California Railroad Company and its predecessors in interest.

XIII.

Your orators further show and allege that by said Railroad Commission Act no adequate or proper remedy has been given or provided for the protection of your orators against the unjust or unlawful enforcement of the said pretended order of September 21st, 1910, so attempted to be made by the said Railroad Commission of Oregon; that in and by said Railroad Commission Act it is provided by Section 51 thereof as follows:—

"If any railroad shall do or cause to be done or permit to be done any matter, act or thing in this Act prohibited, or declared to be unlawful, or shall omit to do any Act, matter or thing required to be done by it, such railroad shall be liable to the person, firm, or corporation injured thereby in treble the amount of damages sustained in consequence of such violation together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case; provided, that any recovery as in this section provided shall in no manner affect a recovery by the State of the Penalty prescribed for such violation, and that the damages provided in Section 26 hereof, awarded the aggrieved party by reason of cars not being furnished when applied for shall be in lieu of the treble damages awarded by this section."

That by Section 33 of said Railroad Commission Act as amended February 23rd, 1909, it is provided as follows:—

"After the commencement of such suit, the Circuit Court may for cause shown upon application to the circuit court or presiding judge thereof, and upon notice to the commission, and hearing,

suspend or stay the operation of the order of the commission complained of until the final disposition of such suit, upon the giving of such bond or other security and upon such conditions as the court may require; and if such order of injunction suspends the order or requirement of the commission fixing rates, then the court shall require a bond with good and sufficient surety conditioned that the railroad or railroads applying for such injunction shall answer for all damages caused by the delay in the enforcement of the order of the commission and all compensation for whatever sums for transportation any person or corporation shall be compelled to pay in excess of the sums such person or corporation would have been compelled to pay if the order of the commission had not been suspended; and such bond shall cover the periods transpiring from

46 time of the issuance of any such injunction until the final determination of the question litigated. The said bond shall be executed in favor of the Railroad Commission of Oregon for the benefit of whom it may concern and shall be enforceable by said commission or any person interested in an appropriate proceeding. Any person paying charges found to be excessive shall have a claim for the excess, whether paid under protest or not, and unless refunded within thirty days after written demand made after final judgment, may recover the same by action against such railroad or such railroad and the sureties on such bond. Claims of persons for money collected in excess of the amount payable under the rate or rates established by the commission shall be assignable in the same manner as any chose in action. No appeal to the Supreme Court shall stay the operation of any order of the commission unless the circuit or Supreme Court shall so direct, and unless the railroad so appealing shall give a bond with like conditions and terms as that given or granting injunctions suspending an order of the commission fixing rates."

And thereby your orators allege and aver that the said Railroad Commission Act is oppressive and confiscatory and affords to your orators no adequate or sufficient remedy to protect the property of your orators, and that the provisions of said act are not uniform and are unequal in their application to the various persons and transportation companies affected thereby; and that by the terms of said Commission act your orators are subjected to excessive penalties in the event your orators should refuse to obey or observe the said pretended order of said Railroad Commission or other like orders, and the said act and the said order each deny to your orators and each of them the equal protection of the laws, and deprive them and each of them of their property and the property of each of them without due process of law, and the said Railroad Commission Act and Order are, and each of them is by reason of the premises unconstitutional and void.

Your orators further show and allege that by Section 1 of Article 3 of the constitution of the State of Oregon it is provided as follows:—

"The powers of the government shall be divided into three separate departments,—the legislative, the executive, including the admin-

47 istrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided."

That in and by said Constitution of Oregon it is nowhere expressly or otherwise provided that any commission shall be created having powers, duties or functions attempted to be conferred upon said Railroad Commission of Oregon by said Railroad Commission Act and amendments thereto, or any of such powers, duties or functions, and there is attempted to be conferred by said Railroad Commission act and amendments thereto upon said defendants Campbell, Aitchison and West, constituting the Railroad Commission, of the State of Oregon, legislative, executive and judicial powers, and there is conferred upon them both legislative and judicial powers, and legislative and administrative powers and there is also conferred upon them judicial and administrative powers, giving and granting unto said Railroad Commission by Section 22 of said act power upon investigation of an existing rate or classification to determine that said rate or classification is unreasonable, and power to fix and substitute therefor such rate or classification as it shall have determined to be just, thereby conferring upon said commission judicial powers, and thereby conferring upon said commission authority to fix and establish a new rate for the future, and thereby giving to said commission authority to legislate upon said subject, and thereby exercising legislative functions; and by section 30 of said act it is further provided that said commission may establish a joint rate and provide for its apportionment between the carriers over whose lines the rate applies; and your orators allege that the establishment of any such joint rate is a legislative act and that the apportionment of such joint act is a judicial act. And your orators further show that by

48 Section 23 of said act it is provided that when ordered by the commission, carriers shall erect station houses at intersections of railroads, and that railroads shall keep such depot warm, lighted and open for a reasonable time before the arrival and after the departure of passenger trains; and your orators show and allege that said order would be a legislative act, and prescribing the time during which such depot or station shall be kept open before and after the arrival of trains would be an administrative act. That the said Railroad Commission Act in divers and other ways attempts to confer upon said commission and the members thereof, administrative, judicial and legislative powers, and the said Commission in attempting to make the said order of September 21st, 1910, and directing when it should take effect, exercised judicial and legislative functions in violation of said Section 1 Article 3 of the Constitution aforesaid, and that by reason of the premises said Railroad Commission Act with the amendments thereto is unconstitutional and void.

XIV.

Your orators further aver and show that the said defendants Thomas K. Campbell, Clyde B. Aitchison and Oswald West, as such railroad commission threaten, pursuant to the authority of Section

57 of the said Railroad Commission Act, to apply to the defendant, A. M. Crawford, as Attorney General of the State of Oregon, to institute an action or, proceedings for the recovery of the penalties provided for by said act, should your orators or either thereof fail or refuse to comply with each and all of the terms, provisions and conditions in the said pretended order. And your orators further show and aver that the said A. M. Crawford, as Attorney General of the State of Oregon, threatens to and will institute such action or proceeding against your orators or either thereof, to recover said penalties, and that all of said defendants are threatening to and

49 will, unless restrained by this Honorable Court, institute proceedings against your orators and particularly against the Southern Pacific Company, its officers, directors, agents and employees, to compel said Southern Pacific Company to publish and put into effect the rates prescribed in the said order of September 21st, 1910; and that said proceedings will thereby compel complainants to observe and put into effect rates prescribed in said order, causing complainants great and irretrievable loss and damage, and divesting complainants of their property without due process of law, and confiscating to the use of the public the property of the complainant in excess of about \$300,000.00 per annum, and will expose your orators and particularly the Southern Pacific Company to the danger of excessive fines and penalties provided for in said Act, and will in effect confiscate the property of your orator and compel your orators, the Southern Pacific Company, its officers, directors and agents to put into effect rates and regulations governing and affecting interstate traffic passing over the lines of railroad of your orators, and the other railroads hereinabove mentioned, contrary to the provisions of the act of Congress approved February 4th, 1887, entitled "An Act to Regulate Commerce", and the amendments thereto, and the regulations of the Interstate Commerce Commission made pursuant thereto and contrary to the terms, provisions, tariffs and regulations prescribed by and now appearing in the tariffs hereinbefore issued by your orators, the Southern Pacific Company, and other carriers engaged in interstate commerce and which were concurred in by other railroads hereinbefore mentioned and which have been duly filed with the Interstate Commerce Commission and are now in full force and effect. And your orators further show and allege that

50 unless restrained and enjoined from so doing the defendants and each of them threaten to and will subject your orators to liability of paying fines and penalties in such sums as will confiscate the property of your orators and will subject your orators, through the loss of traffic and earnings therefrom, to great and irretrievable loss, damage and injury.

XV.

And your orators allege and show that the said order of the said Railroad Commission of Oregon is void and of no force and effect in this:

(a) That thereby the shippers and other persons who may avail themselves of the said class rates so attempted to be ordered into

effect, will take the property of your orators for private use without just or any compensation, and without the consent of your orators, in violation of Section 18, of Article I of the Constitution of Oregon, which provides that private property shall not be taken for public use, nor the particular services of any man be demanded without just compensation, nor, except in case of the state without such compensation first assessed and tendered.

That said order of said Railroad Commission is unreasonable, unjust and arbitrary, and particularly in this: that if the same is enforced, it will deprive the Southern Pacific Company of earnings to the amount of nearly \$300,000 annually, which it is entitled to collect and receive in excess of the revenues that would be derived from the enforcement of said order, so as to enable your orators to receive a just and fair return upon the property of your orators.

(b) Said Railroad Commission Act is void and of no force and effect in this: That it is an attempt to give to said defendants Campbell, Aitchison and West, collectively known as "Railroad Commission of Oregon", jurisdiction, power and authority to exercise legislative, executive and judicial powers, contrary to and in violation of Section 1, of Article III of the Constitution of the State of Oregon, which provides that: "The powers of the government shall be divided into three separate departments,—the legislative, the executive, including the administrative, and the judicial; and no person charged with official duty under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided."

(c) Said Railroad Commission of Oregon, in passing upon said class rates upon its own initiative, and hearing the testimony of shippers, and in taking said testimony in relation thereto, attempted to and did exercise judicial functions; and in making said order, exercised legislative and judicial functions; both and each in violation of said Section 1 Article III, as aforesaid.

(d) Said Railroad Commission Act is void and of no force and effect in this: that it violates Section 21, Article I, of the Constitution of the State of Oregon, which provides that: "No ex post facto law, or law impairing the obligations of contracts, shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution: Provided, that laws locating the capital of the State * * * may take effect or not, upon a vote of the electors, interested."

(e) Said Railroad Commission Act is void and of no force and effect in this: that it violates Section 21, Article I, of said Constitution of Oregon, in this: that it is expressly provided that the said Railroad Commission of Oregon shall have and exercise authority which, when exercised, shall take effect upon their orders, and not by virtue of any law passed by the Legislative Assembly of the state.

(f) Said Railroad Commission Act is void and violative of the Constitution of the State of Oregon in this, that it violates Section 1, Article VII, which provides that: "The judicial power of the State

shall be vested in a Supreme Court, Circuit Courts, and County Courts, which shall be courts of record, having general jurisdiction, to be defined, limited and regulated by law, in accordance with this Constitution," and particularly in this, that the said Act undertakes to deprive the complainants and all other persons of their right to contest in the courts of the state, authorized by said Section 1, Article VII, or of any court other than in the Circuit Court of the State of Oregon, for Marion County; and that the said Act is a denial to complainants and other persons of the equal protection of the laws, and deprives the complainants and other citizens of other states of the right to litigate their cause of suit in the courts of the United States, and as such is violative of the Fourteenth Amendment to the Constitution of the United States, which, among other things, provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Your orators further say that the said order of the said Commission so attempted to be made on September 21, 1910, is void and of no force and effect, in this: that if enforced it will deprive your orators of their property without due process of law, and will prevent your orators from receiving a just or any return upon their properties sufficient to enable your orator the Oregon & California Railroad Company to pay to its stockholders any return or dividend upon any of its capital stock whatsoever.

(g) Said Railroad Commission Act is void and of no force and effect in this: that it violates Article I, Section 8, paragraph 3, of the Constitution of the United States, which provides: "Congress shall have power to regulate commerce with foreign nations and among the several states, and with the Indian tribes," and is violative of Article I, Section 18, of the Constitution of the United

53 States, which provides: "Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof," and particularly in this: that the said act of the Legislative Assembly of the State of Oregon attempts to confer upon the Railroad Commission of Oregon jurisdiction over interstate commerce, and does not limit its power and authority to commerce wholly within the State of Oregon; and particularly, further, in this, that the said Railroad Commission Act necessarily attempts to and does confer upon the said Railroad Commission authority and power to take into consideration, in determining and fixing any rate for the carriage of freight or passengers upon the lines of your orators within the State of Oregon, the earnings of the said complainants derived from interstate traffic.

(h) Said order so attempted to be made as aforesaid, on Septem-

ber 21, 1910, is void and of no force and effect in this: that said order, if enforced, would violate Article I, Section 8, paragraph 3, of the Constitution of the United States, hereinbefore set out, and would violate Article I, Section 18, of the Constitution of the United States, hereinbefore set out, and would be in conflict with the Act of February 4, 1887, entitled, "An Act to regulate commerce," and the amendments thereto, and particularly the "Act to regulate commerce," as amended June 18, 1910, in this, that the said order directly, materially and substantially affects the rates upon practically all the interstate shipments of your orators.

(i) Said Railroad Commission Act is void and of no force and effect in this: that it provides for excessive, unusual penalties, fines and punishments, and thereby deprives the complainants and other common carriers and other citizens of the United States of the
54 equal protection of the laws, and thereby takes property of the complainants without due process of law.

(j) Said Railroad Commission Act, and the said pretended order of September 21, 1910, and each thereof, is void and of no force and effect in this: that the same is violative of Section 10, of Article I of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts, and particularly in this, that the said Railroad Commission Act and the said pretended order are and each of them is violative of the contract rights of your orators under the Articles of Incorporation of the Oregon & California Railroad Company and its predecessors in interest, and under the constitution and laws of the State of Oregon, and particularly under Section 2, Article XI of the Constitution of the State of Oregon, and Section 36 of Chapter 7, of the Miscellaneous Laws of the State of Oregon, being Section 34 of the Act of the Legislative Assembly, approved October 14, 1862, providing for private corporations and the appropriation of private property therefor, hereinbefore specifically set out.

(k) Said order is void and of no force and effect in this: that the pretended reduction of said class rates is based upon the arbitrary approval of Class 1 now in effect by your orator, Southern Pacific Company, and an arbitrary spread between said class rates, adopting the arbitraries of 100% for first class, 85% of first class for second class, 70% of first class for third class, 60% of first class for fourth class, 50% of first class for fifth class, 50% of first class for Class A, 40% of first class for class B, 30% of first class for Class C, 25% of first class for Class D, and 20% of first class for Class E, which said arbitrary classification and spread, and each thereof,
55 was adopted by the said Railroad Commission in making said pretended order, and was so adopted arbitrarily and without any reference to the distance such traffic should be moved, or the character or nature of the traffic, or the service to be performed, or the compensation that should be paid therefor, and said classification is capricious and not based upon any fair consideration.

And your orators further show that under said arbitrary spread, or the application of said percentage to said class rates, the largest

reduction is effective at points on said lines more difficult and expensive to operate by reason of mountain chains and physical difficulties.

(l) Said pretended order is void and of no force and effect in this: that the rates sought to be prescribed by said order, in lieu of existing rates, are confiscatory of the property of your orators, and will deprive your orators of their property without compensation, and without due process of law.

XVI.

And your orators further show that the complainants have no plain, speedy or adequate remedy at law, and can have no adequate relief except in this court, and that unless restrained the said Railroad Commission of Oregon, and particularly the said defendants, will attempt to enforce said pretended order, and to prosecute or cause to be prosecuted divers and sundry actions against the complainant Southern Pacific Company to recover the penalties provided by said Act of the Legislative Assembly aforesaid, and will subject the complainants, and particularly the Southern Pacific Company, to a multiplicity of suits or actions in respect to the same.

Whereupon your orators bring this their bill, and thereupon your orators pray:

56 First: That this Honorable Court will grant an order temporarily restraining Thomas K. Campbell, Clyde B. Aitchison, and Oswald West, and each of them, and the said A. M. Crawford, as Attorney General, from attempting to enforce said order hereinbefore set out, and from taking any action, step, or proceeding against your orators, or either of them, or against any of the officers, agents, or employés of either of them, to enforce any penalties or remedies for any alleged violation by your orators or either thereof of the said order.

Second: That upon final hearing herein a decree be entered perpetually enjoining the said defendants and each of them, including their agents, officers, employees and attorneys, from attempting to enforce said order, or to prosecute any suits or actions against the complainants or either of them for pretended violation of said order, and that said order be set aside and held for naught, and that the said Railroad Commission Act be declared to be invalid and of no force and effect.

Third: That pending this suit, said order be suspended, and that upon final hearing, said order be set aside and held for naught, and the said Railroad Commission Act be adjudged to be void and of no force and effect.

Fourth: That your orators may have such other and further relief in the premises as the nature and circumstances of the case may require, and to the court may seem meet and equitable.

And may it please your Honor to grant unto your orators a writ of injunction conformable to the prayer of this bill, and also a writ of this Honorable Court to be directed to the said defendants, Thomas K. Campbell, Clyde B. Aitchison, Oswald West and A. M. Crawford, and each of them, commanding them and each of them, on a day

57 certain therein to be named, and under a certain penalty, to be and appear before your Honorable Court, and then and there full, true and perfect answers make to all and singular the premises (but not under oath, their and each of their answers under oath being expressly severally waived), and to stand and perform and abide such further orders, directions and decree therein as to your Honors shall seem meet and shall be agreeable to equity and good conscience.

And your orators will ever pray.

SOUTHERN PACIFIC COMPANY,
By J. P. O'BRIEN,
General Manager Lines in Oregon.
OREGON & CALIFORNIA RAILROAD
COMPANY,
By J. P. O'BRIEN, *Vice-President.*

BEN C. DEY,
JAMES E. FENTON AND
WM. D. FENTON,
Solicitors for Complainants.
WM. D. FENTON,
Of Counsel for Complainants.

STATE OF OREGON,
County of Multnomah, ss:

I, J. P. O'Brien, being first duly sworn depose and say: that I am General Manager of Southern Pacific Company, Lines in Oregon, and First Vice-President of the Oregon & California Railroad Company, complainants above named; that I have read the foregoing bill of complaint, know the contents thereof, and that the same is in all respects true of my own knowledge except as to the matters and things which are therein stated upon information and
58 belief, and as to those things, I believe the same to be true.

J. P. O'BRIEN.

Subscribed and sworn to before me this 12th day of October, 1910.

[SEAL.]

KENNETH L. FENTON,
Notary Public for Oregon.

DISTRICT OF OREGON,
County of Multnomah, ss:

Due service of the within Bill of Complaint is hereby accepted in said County, Oregon, this 12th day of October, 1910, by receiving a copy thereof, duly certified to as such by Wm. D. Fenton, solicitor and Attorney for complainants.

A. M. CRAWFORD AND
CLYDE B. ATTCHISON,
Attorneys for Defendants.

Bill of Complaint. Filed October 12, 1910. G. H. Marsh, Clerk.

59 And afterwards, to wit, on the 7th day of November, 1910, there was duly filed in said Court a *Præcipe* for appearance of defendants in words and figures as follows, to wit:

60 In the Circuit Court of the United States for the District of Oregon.

No. 3675. In Equity.

SOUTHERN PACIFIC COMPANY and OREGON AND CALIFORNIA RAILROAD COMPANY, Complainants,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, Commissioners Constituting "Railroad Commission of Oregon," and A. M. Crawford, Attorney General of the State of Oregon, Defendants.

Præcipe for Appearance.

To the Clerk of said Court:

Please enter our appearance as solicitors for the defendants above named in the above entitled matter.

November 4th, 1910.

A. M. CRAWFORD,
CLYDE B. AITCHISON,

Solicitors for Defendants Above Named.

Præcipe for appearance. Filed November 7, 1910. G. H. Marsh, Clerk.

61 And afterwards, to wit, on the 3rd day of December, 1910, there was duly filed in said Court a Demurrer to the Bill of Complaint in words and figures as follows, to wit:

62 In the Circuit Court of the United States for the District of Oregon.

No. 3675.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Complainants,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, Commissioners Constituting "Railroad Commission of Oregon," and A. M. Crawford, Attorney General of the State of Oregon, Defendants.

The Joint and Several Demurrers of Thomas K. Campbell, Clyde B. Aitchison, and Oswald West, Commissioners Constituting "Railroad Commission of Oregon," and A. M. Crawford, Attorney General of the State of Oregon, Defendants Above Named, to the Bill of Complaint of Complainants Above Named.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things, in the said complainant's bill

of complaint contained, to be true, in such manner and form as the same are therein set forth and alleged, do demur to said bill on the following grounds and each of them:

I.

That it appears upon the face of the bill herein that the court has no jurisdiction of the subject matter of the controversy between the parties.

63

II.

That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by the said bill against these defendants, or any of the defendants.

III.

That said complainant has not in and by its said bill stated such a case as doth or ought to entitle it to the relief thereby sought and prayed for, from or against these defendants, or any of them.

IV.

That it appears upon the face of the bill that the complainant has an adequate remedy at law.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants demur thereto, and pray the judgment of this Honorable Court whether they shall be compelled to make any answer to said bill, and they humbly pray to be hence dismissed, with their reasonable costs in this behalf sustained.

C. B. AITCHISON,
A. M. CRAWFORD,

Solicitors and of Counsel for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

A. M. CRAWFORD,
Of Counsel for Defendants.

Salem, Oregon, December 1st, 1910.

64 UNITED STATES OF AMERICA,
State of Oregon, County of Marion, ss:

Clyde B. Aitchison, being duly sworn, deposes and says: I am one of the above named defendants. The foregoing demurrer is not interposed for delay.

CLYDE B. AITCHISON.

Subscribed and sworn to before me this 1st day of December, 1910.

[SEAL.]

G. C. FRISBIE,
Notary Public for Oregon.

STATE OF OREGON,

County of Multnomah, ss:

Due service of the within demurrer is hereby accepted in Multnomah County, Oregon, this the 2nd day of December, 1910, by receiving a copy thereof, being certified as such by A. M. Crawford, of counsel for defendants.

WM. D. FENTON,

Solicitor and of Counsel for Complainants.

Demurrer. Filed Dec. 3, 1910. G. H. Marsh, Clerk.

65 And Afterwards, to wit, on the 3rd day of December, 1910, there was duly filed in said Court, a Demurrer to portions of the Bill of Complaint, in words and figures as follows, to wit:

66 In the Circuit Court of the United States for the District of Oregon.

No. 3675.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Complainants,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, OSWALD WEST, Commissioners Constituting "Railroad Commission of Oregon," and A. M. Crawford, Attorney General of the State of Oregon, Defendants.

The Joint and Several Demurrers of Thomas K. Campbell, Clyde B. Aitchison, and Oswald West, Commissioners Constituting "Railroad Commission of Oregon," and A. M. Crawford, Attorney General of the State of Oregon, Defendants Above Named, to Portions of the Bill of Complaint of Complainants Above Named.

These defendants appearing by protestation, not confession or acknowledging all or any of the matters and things in said complainants' bill of complaint, to be true, in such manner and form as the same are therein set forth and alleged, to demur as to so much and such part of the bill of complaint as is contained in paragraphs eight and nine thereof, and in each of said paragraphs, on the following grounds, and each of them:

I

That it appears from the facts set forth in said paragraph, and in each and all of them, that complainants are not entitled to the relief, or any part thereof, prayed for from or against these

67 defendants, or any of them.

II.

That the facts as set out in said paragraphs, and each of them, do not state a cause of suit, or any part of a cause of suit against these defendants, or any of said defendants.

And these defendants by protestation, not confessing or acknowledging any of the matters or things in said complainants' bill of complaint contained, to be true in such manner and form as therein set forth and alleged, do further demur to the matters and things set forth in various paragraphs of said bill of complaint, separately as to each paragraph, for the reasons and grounds hereinafter set forth, and for each of them.

Said defendants do demur separately to paragraph ten.

Said defendants do demur separately to paragraph eleven.

Said defendants do demur separately to paragraph twelve.

Said defendants do demur separately to paragraph thirteen.

Said defendants do demur separately to paragraph fourteen.

Said defendants do demur separately to paragraph fifteen.

Said defendants do demur separately to paragraph sixteen.

I.

That it appears from the facts set forth in said paragraphs, and in each and all of them, that complainants are not entitled to the relief, or any part thereof, prayed for from or against these defendants, or any of them.

II.

That the facts as set out in said paragraphs, and each of them, do not state a cause of suit, or any part of a cause of suit, against these defendants, or any of said defendants.

68 Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants demur thereto, and pray the judgment of this Honorable Court whether they shall be compelled to make any answer to said bill, and they humbly pray to be hence dismissed, with their reasonable costs in this behalf sustained.

C. B. AITCHISON,

A. M. CRAWFORD,

Solicitors, and of Counsel for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

CLYDE B. AITCHISON,
Of Counsel for Defendants.

Salem, Oregon, December 1st, 1910.

UNITED STATES OF AMERICA,
State of Oregon, County of Marion, ss:

Clyde B. Aitchison, being duly sworn, deposes and says: I am one of the above named defendants. The foregoing demurrer is not interposed for delay.

CLYDE B. AITCHISON.

Subscribed and sworn to before me this 1st day of December, 1910.

[SEAL.]

G. C. FRISBIE,
Notary Public for Oregon.

STATE OF OREGON,
County of Multnomah, ss:

Due service of the within demurrer is hereby accepted in Multnomah County, Oregon, this the 2nd day of December, 1910, by receiving a copy thereof, being certified as such by A. M. Crawford, of counsel for defendants.

WM. D. FENTON,
Solicitor and of Counsel for Complainants.

Demurrer to portions of bill of complaint. Filed Dec. 8, 1910.
G. H. Marsh, Clerk.

69 And afterwards, to wit, on Monday, the 3rd day of July, 1911, the same being the 72nd judicial day of the Regular April, 1911, Term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

70 In the Circuit Court of the United States for the District of Oregon.

No. 3675.

SOUTHERN PACIFIC COMPANY
vs.
THOMAS K. CAMPBELL et al.

JULY 3, 1911.

This cause was heard upon the demurrer of the defendants to the Bill of Complaint herein, and was argued by Mr. William D. Fenton and Mr. James E. Fenton, of counsel for the plaintiff, and by Mr. Joseph N. Teal and Mr. Clyde B. Aitchison, of counsel for the defendants. On consideration whereof, it is ordered and adjudged that said demurrer be, and the same is hereby, sustained; and on motion of said plaintiff, it is ordered that it be, and it is hereby, allowed thirty days from this date within which to file an amended bill of complaint.

R. S. BEAN, *Judge.*

Order on demurrer to bill. Filed July 3, 1911. G. H. Marsh, Clerk.

71 And Afterwards, to wit, on the 3rd day of July, 1910, there was duly filed in said Court, an opinion, in words and figures as follows, to wit:

72 In the Circuit Court of the United States for the District of Oregon.

No. 3675.

SOUTHERN PACIFIC COMPANY, a Corporation, and OREGON & CALIFORNIA RAILROAD Co., a Corporation, Complainants,

vs.

THOS. K. CAMPBELL, CLYDE B. AITCHISON, FRANK J. MILLER, Commissioners Constituting "Railroad Commission of Oregon," and A. N. Crawford, Attorney General of the State of Oregon, Defendants.

W. D. Fenton, Jas. E. Fenton and Ben C. Dey, for Complainants.
J. N. Teal and Clyde B. Aitchison, for defense.

BEAN, *District Judge*:

This suit has been submitted on a demurrer to a bill to enjoin the enforcement of an order of the State Railroad Commission fixing certain class rates from Portland south over the lines for the Oregon & California Railroad Company, operated by the Southern Pacific Company, as lessee.

In September, 1910, the Commission upon due investigation and after a hearing by the complainant company, found that certain enumerated class rates on freight from Portland south to various stations in Oregon, then in force on complainant's lines were unjust, unreasonable and excessive, and unjustly discriminatory as against the several stations and localities and as between various classes of commodities, and by an order duly made and entered, fixed rates decided and found by it to be just, reasonable and non-discriminatory, in lieu thereof, expressly providing in the

73 order that it should not be construed to apply to interstate commerce. It is alleged that the rates fixed by the Commission, if enforced, will reduce the receipts of the complainant company, local and interstate, which for the year 1909, amounted to \$7,104,081.00 by the sum of \$276,931.80, but it is admitted by its counsel that this was an error in the footing and that the actual estimated reduction will be \$156,072.48 annually.

Without referring to the allegations of the complaint at length, the objections made to the order sought to be enjoined may be summarized as follows:

First. The act of the legislature creating the Railroad Commission is unconstitutional and void, because (a) of the excessive penalties and burdens imposed for refusal to obey the orders of the Commission; (b) because its provisions are not uniform and equal in their application; (c) because it confers upon the Commission legislative, executive and judicial powers; (d) because rate making is a legislative function and a rate cannot be made to take effect upon the order of a subordinate commission; (e) because it requires a railroad company aggrieved by an order of the Commission to proce-

cute any suit to review the same in the state courts; (f) because it provides for a judicial review of the orders of the Commission.

Second. The order in question is violative of the Constitution of the United States because it directly and materially affects interstate commerce, since the rate on interstate traffic over complainant's lines in Oregon is made up by the through rate to Portland with the local rate out.

Third. The law under which the Oregon & California Railroad Company was incorporated provides that a corporation organized thereunder "shall have power to collect and receive such tolls and freights for transportation of persons and property as it may
74 prescribe," and thus deprives the state of the power to fix rates for transportation of freight or passengers.

Fourth. The rates fixed by the Commission and sought to be enjoined in this suit are so unreasonably low as to amount to a confiscation pro tanto of complainant's property.

Fifth. The order of the Commission was based upon an arbitrary approval of Class One of rates then in force on complainant's line and an arbitrary spread between such class and other classes without any reference to the distance the traffic was to be carried, the character or nature, the service to be performed, or the compensation that should be paid therefor.

Seventh. That the rates prescribed by the Commission are unreasonable, and this court should review the same under the provisions of the Commission Act.

These several questions have been elaborately argued orally and by printed briefs. A large part of the discussion herein is directed to the constitutionality of the Railroad Commission Act, and the contention that the order sought to be enjoined directly and materially affects interstate commerce. Both of these questions were considered and decided by this court in the Campbell Case (*O. R. N. vs. Campbell*, 173 Fed. 957): The opinion of Judge Wolverton in that case contains such an exhaustive, satisfactory and full discussion of the subject as to leave nothing to be added. I fully concur in his views and am unable to distinguish this case in principle from the one decided by him. The averments in the bill that the order of the Commission interferes with interstate commerce is but the conclusion of the pleader, and is not in harmony with the facts alleged. Morrow, Circuit Judge, says:

75 "A rate fixed by a state railroad commission for intrastate traffic, if just and reasonable in and of itself, cannot be held to be unlawful and discriminatory because it may conflict with some rate fixed by the railroad company for interstate traffic. Upon adjustment the latter rate must yield." (*Woodside v. Tonopah & G. R. Co.* 184 Fed. 360).

The next point is disposed of by this court and the State Supreme Court in *Ex Parte Koehler, Receiver*, 23 Fed. 529, and *State vs. S. P.* 23 Ore. 424.

The remaining points may be considered together. Rate making is a legislative function and when rates are fixed by the legislature or a subordinate body to which the power has been duly delegated,

they will not be declared invalid by the Federal Courts unless they are so unreasonably low that their enforcement would amount to the taking of property for public use without compensation and therefore practically a confiscation thereof. *Wilcox vs. Cons. Gas Co.* 212 U. S. 19. When it is shown that the prescribed rates will prevent the carrier from earning such compensation as under the circumstances is just, both to it and the public, their enforcement will be enjoined. (*Smith vs. Ames*, 169 U. S. 466.) But the rates now in controversy were made by the State Commission in the light of the knowledge of the facts, and after a thorough investigation and a hearing of the party interested. They are made by law *prima facie* lawful, and are therefore presumed to be reasonable, fair and just.

A. C. L. R. R. vs. Fla. ex rel.

Ellis, 203 U. S. 256.

Inter. Com. v. C. R. I. & P. R. R., 218 U. S. 88.

Ill. Cen. vs. Inter. Com. Com. 206 U. S. 441.

The burden is on the complainant to show by clear and satisfactory allegation and proof that, if enforced, they will necessarily be confiscatory. This court has no authority to fix rates, nor should it attempt to usurp the powers of the Commission upon its conception as to whether such powers have been wisely exercised or not. It can review the findings of the Commission only so far as to determine whether or not the rates promulgated by it will deprive the carrier of its property without just compensation.

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T. & P. R. R. v. Interstate Com., 162 U. S. 197.

Ex Parte Young, 209 U. S. 123.

San Diego L. & T. Co. v. Natl. City, 174 U. S. 739.

Knoxville v. K. Wtr. Co., 212 U. S. 1.

San Diego L. & T. Co. v. Jasper, 189 U. S. 439.

Interstate Com Com. v. Ill. Cen. 215 U. S. 452.

B. & O. vs. U. S. 215 U. S. 481.

Nor do I think its power, in this regard, is in any respect enlarged by the provisions of the state law for a review by the state courts of the acts of the Commission. Whether rates prescribed by legislative authority to be charged by public service corporations are unreasonably low, within the doctrine stated, involves a determination of the value of the property of the complainant devoted to the particular public use to which the rates apply, the measure of a reasonable return thereon, and whether the rates allowed to be charged are sufficient to that end. These questions are complex, intricate and often difficult of ascertainment; especially in the case of a carrier doing both local and interstate business. There is difficulty, in the first place, in determining the value of the property as a whole, whether it is to be taken as the market value of the stock and bonds, the original cost of construction with expenses of permanent improvements added, the cost of reproduction, the value of the property as a going concern, or whether all these matters are to be considered in fixing a fair value in a given case, and after the

entire value of the properties has been determined, how it shall be divided among the several states through which the road passes. It is substantially agreed that where a railroad is used in both local and interstate business, and the value of the property devoted to public use within a given state is ascertained, that it is fair to apportion such value among the different kinds and classes of business upon a revenue basis, but it is not always easy to ascertain the revenue from interstate traffic. The records of a company commonly show the gross revenue from local traffic wholly within the state, but much of the interstate business is often carried through the state, and in other instances the local haul within the state is only a small proportion of the entire haul and it is therefore difficult to determine what should properly and rightfully be allowed for interstate traffic. But even greater difficulty lies in the apportionment of the cost of the service, between local and interstate business, so as to determine whether the revenues from a particular class are sufficient to afford a fair return upon the value of the property devoted to such class. There are many items of cost, that disclose the class of business on account of which they are incurred, and can therefore be properly placed, but there is a large percentage of cost of doing all the business, like the maintenance of ways and structures, equipment, superintendence, operation of trains carrying both local and interstate traffic, which are incurred for the common benefit of both, and there is no definite rule by which these items of common cost can be divided between the different classes with mathematical accuracy. *M. K. & T. R. R. v. Love*, 177 Fed. 493.

These matters are not referred to because particularly material in the case in hand, nor with a design to approve or disapprove any particular rule or doctrine in reference thereto, but only to emphasize the position that a complainant seeking to enjoin rates fixed by lawful authority should state facts and not conclusions, facts which, if true, show that such rates will not or do not afford a fair return upon the value of the complainant's property devoted to the particular use. In the absence of such allegations, the presumption of law that the rates as made are fair, just and reasonable must prevail, and in my judgment the bill does not state facts sufficient to overcome this presumption. It is alleged in general terms that the local rates of the complainant company affected by the order of the Commission were reasonable and just and as low as the situation of the properties and the competitive condition of the business, both intrastate and interstate "will permit or allow, and the said compensation charged upon said existing tariffs is reasonable and just and affords to your orators but slight compensation above the cost of the service;" that the decreases attempted to be made by the Commission involve the class rates referred to and, if enforced, will deprive the complainant of a large sum of annual revenue and compel it to give the use of its property without reasonable or just compensation, and will compel it to increase other rates upon traffic not affected by the order, and particularly upon products of the soil, forest and farm, many of

which receive and enjoy terminal rates, including such commodities to be sold and consumed in the markets of the world, thereby compelling the complainant to discriminate against such last named products, to the great injury of the complainant and of the public; and that the order of the Commission is unreasonable, unjust and arbitrary, and, if enforced, will deprive the complainant of earnings which is entitled to collect and receive, in excess of the revenue that would be derived from the enforcement of the order; and "that said pretended order is void and of no force and effect in this:

79 that the rates sought to be prescribed by said order, in lieu of existing rates, are confiscatory of the property of your orators, and will deprive your orators of their property without compensation and without due process of law." These averments are not sufficient to raise an issue. (*Central of Ga. R. R. vs. McLendon*, 157 Fed. 961). They are but conclusions of law and are not supported by any averment of fact. Indeed they are inconsistent with the facts alleged. The bill states that the receipts from all sources, local and interstate, for the year 1909, were \$7,104,081.00, and the gross expenditures during the year \$5,839,698.00, leaving a net balance for the year of \$1,264,383.00. The value of the property, based upon the capital stock, bonded and floating indebtedness is put in the complaint at \$39,052,008. The bill is silent as to whether interest on the bonded and other indebtedness is included in the aggregate expenditures but since no segregation is made by complainant it is fair to assume that they include the operating expenses, interest and fixed charges, thus leaving a net balance of \$1,264,383, to be applied as dividends on complainant's stock of the par value of \$19,000,000.00. On this showing, it certainly cannot be consistently said that the earnings of the complainant, even after making the deductions alleged to be caused by the order complained of "will afford but slight compensation above the cost of service," or that the order of the Commission is confiscatory, or, in advance of actual experience, that the rates fixed by the Commission will not afford a fair return upon the value of the property.

Again the complainant does not state the amount of intra-state traffic which will be affected by the order, nor the cost of service, nor the value of the property devoted to such business. It sets out the value of the entire property, the gross receipts and disbursements for both state and interstate business for a number of years prior to the date of the order, the amounts received from state and interstate business, freight and passenger, during the year 1909, and approximate percentage of tonnage affected by the order sought to be enjoined, assuming, as I take it, that both local and interstate traffic are affected by such order. There is no allegation as to the cost of conducting state business as distinguished from interstate business, and no statement of the difference between passenger and freight expenses.

The demurrer should be sustained and it is so ordered.

Opinion. Filed July 3, 1911. G. H. Marsh, Clerk.

81 And afterwards, to wit, on Tuesday, the 18th day of July, 1911, the same being the 84th judicial day of the regular April, 1911, term of said court. Present: The Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

82 In the Circuit Court of the United States for the District of Oregon.

In Equity. No. 3675.

SOUTHERN PACIFIC COMPANY and OREGON AND CALIFORNIA RAILROAD COMPANY, Complainants,

vs.

THOMAS K. CAMPBELL, FRANK J. MILLER and CLYDE B. AITCHISON, Constituting the Railroad Commission of Oregon, and A. M. Crawford, Attorney General of the State of Oregon, Defendants.

This cause came on for hearing upon the demurrer of defendants to complainants' bill of complaint, and was duly argued by counsel for complainants and defendants, and taken under advisement by the Court, and thereafter, and on July 3rd, the court rendered its opinion sustaining said demurrer and on the same day counsel for complainants caused to be entered an order granting to said complainants a period of thirty days in which to further plead, and thereafter, and on the 18th day of July, W. D. Fenton, counsel for complainants, appeared in open court, and stated that complainants did not desire to further plead in said cause.

Now, therefore, it is hereby considered, ordered, adjudged and determined that the demurrer of said defendants to said bill of complaint be, and the same is, hereby sustained, and the said
83 complaint is hereby dismissed.

And it is further ordered that the defendants have, and recover, of and from complainants their costs and disbursements herein, taxed in the sum of — Dollars.

Dated this 18th day of July, 1911.

R. S. BEAN, *Judge.*

Service of the within judgment order and receipt of a copy is hereby admitted this 18th day of July, 1911.

WM. D. FENTON,
Of Solicitors for Complainants.

Judgment. Filed July 18, 1911. G. H. Marsh, Clerk. By J. W. Marsh, Deputy.

84 And afterwards, to wit, on the 28th day of July, 1911, there was duly filed in said court, a Petition for Appeal in words and figures as follows, to wit:

85 In the Circuit Court of the United States for the District of Oregon.

No. 3675.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Plaintiffs,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, FRANK J. MILLER, Commissioners Constituting "Railroad Commission of Oregon," and A. M. Crawford, Attorney General of the State of Oregon, Defendants.

The above named plaintiffs conceiving themselves aggrieved by the decree made and entered in the above entitled court on the 18th day of July, 1911, in the above entitled cause, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the Assignment of Errors which is filed herewith, and pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States; that the judge of the above entitled court may be pleased to fix the amount of the bond for said plaintiffs, for costs and damages on appeal, and approve said bond.

WM. D. FENTON,

BEN C. DEY,

JAMES E. FENTON AND

KENNETH L. FENTON,

*Solicitors for Southern Pacific Co. and
Oregon & California R. R. Co.*

86 DISTRICT OF OREGON,
County of Multnomah, ss:

Due service of the within petition for appeal is hereby accepted and admitted to have been made upon defendants and upon us in Multnomah County, Oregon, this 25th day of July, 1911, by receiving a copy thereof, duly certified to as such by Wm. D. Fenton, of attorneys for plaintiffs.

JOSEPH N. TEAL,
Of Attorney for Defendants.

Petition for Appeal. Filed July 28, 1911. G. H. Marsh, Clerk

87 And afterwards, to wit, on the 28th day of July, 1911, there was duly filed in said court, an Assignment of Errors in words and figures as follows, to wit:

88 In the Circuit Court of the United States for the District of Oregon.

No. 3675.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD
COMPANY, Plaintiffs,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, FRANK J. MILLER,
Commissioners Constituting "Railroad Commission of Oregon,"
and A. M. Crawford, Attorney General of the State of Oregon,
Defendants.

Assignment of Errors.

The plaintiffs, Southern Pacific Company, and Oregon & California Railroad Company, pray an appeal from the final decree of this court heretofore on the 18th day of July, 1911, entered herein, to the Supreme Court of the United States, and assign for error:

I.

That said Circuit Court erred in sustaining the demurrers and each thereof of the defendants to the bill of complaint herein.

II.

That said Circuit Court erred in dismissing said cause and said bill of complaint.

III.

That said Circuit Court erred in deciding that plaintiffs are not entitled to the relief prayed for in their bill of complaint, or to any relief whatever in said cause.

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IV.

That said Circuit Court erred in refusing to grant to plaintiffs the relief prayed for in their bill of complaint herein.

V.

That said pretended order of September 21, 1910, of the Railroad Commission of Oregon, is void and of no force and effect in this:

(a) That thereby the shippers and other persons who may avail themselves of the said class rates so attempted to be ordered into effect, will take the property of plaintiffs for private use without just or any compensation, and without the consent of plaintiffs, in violation of Section 18, of Article I of the Constitution of Oregon, which provides that private property shall not be taken for public use, nor the particular services of any man be demanded without just compensation, nor, except in case of the state, without such compensation assessed and tendered.

That said order of said Railroad Commission is unreasonable, unjust and arbitrary, and particularly in this: that if the same is enforced, it will deprive the Southern Pacific Company of earnings to the amount of \$156,072.48 annually, which it is entitled to collect and receive in excess of the revenues that would be derived from the enforcement of said order, so as to enable plaintiffs to receive a just and fair return upon the property of plaintiffs.

(b) Said Railroad Commission Act is void and of no force and effect in this: that it is an attempt to give to said defendants Campbell, Aitchison, and Miller, collectively known as "Railroad Commission of Oregon," jurisdiction, power and authority to exercise legislative, executive and judicial powers, contrary to and in violation of said Section 1, of Article III of the Constitution of the State of Oregon, which provides that: "The powers of the government shall be divided into three separable departments,—the legislative, the executive, including the administrative, and the judicial; and no person charged with official duty under one of these departments shall exercise any of the functions of another, except as in this Constitution expressly provided."

(c) Said Railroad Commission of Oregon, in passing upon said class rates upon its own initiative, and hearing the testimony of shippers, and in taking said testimony in relation thereto, attempted to and did exercise judicial functions; and in making said order, exercised legislative and judicial functions; both and each in violation of said Section 1, Article III, as aforesaid.

(d) Said Railroad Commission Act is void and of no force and effect in this: that it violates Section 21, Article I, of the Constitution of the State of Oregon, which provides that: "No ex post facto law, or law impairing the obligations of contracts, shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this constitution; Provided, that laws locating the capital of the state * * * may take effect or not, upon a vote of the electors interested."

(e) Said Railroad Commission Act is void and of no force and effect in this: that it violates Section 21, Article I, of said Constitution of Oregon, in this: that it is expressly provided that the said Railroad Commission of Oregon shall have and exercise authority which, when exercised, shall take effect upon their orders, and not by virtue of any law passed by the Legislative Assembly of the state.

(f) Said Railroad Commission Act is void and violative of the Constitution of the State of Oregon in this: that it violates Section 1, Article VII, which provides that: "The judicial power of the state shall be vested in a Supreme Court, Circuit Courts, and County

Court, which shall be courts of record, having general jurisdiction, to be defined, limited and regulated by law, in accordance with this Constitution," and particularly in this, that the said Act undertakes to deprive the complainants and all other persons of their right to contest in the courts of the state, authorized by said Section 1, Article VII, or of any court other than the Circuit Court of the State of Oregon, for Marion County; and that the said Act

a denial to complainants and other persons of the equal protection of the laws, and deprives the complainants and other citizens of other states of the right to litigate their cause of suit in the courts of the United States, and as such is violative of the Fourteenth Amendment to the Constitution of the United States, which, among other things, provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

That the said order of the said commission so attempted to be made on September 21, 1910, is void and of no force and effect, in this: that if enforced it will deprive plaintiffs of their property without due process of law, and will prevent plaintiffs from receiving a just or any return upon their properties sufficient to enable plaintiff, the Oregon & California Railroad Company, to pay its stockholders any returns or dividends upon any of its capital stock whatsoever.

(g) Said Railroad Commission Act is void and of no force and effect in this: that it violates Article I, Section 8, Paragraph 3 of the Constitution of the United States, which provides: "Congress shall have power to regulate commerce with foreign nations and among the several states, and with the Indian tribes," and is violative of Article I, Section 18, of the Constitution of the United States, which provides: "Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof," and particularly in this: that the said act of the Legislative Assembly of the State of Oregon attempts to confer upon the Railroad Commission of Oregon jurisdiction over interstate commerce, and does not limit its power and authority to commerce wholly within the State of Oregon; and particularly, further, in this, that the said Railroad Commission Act necessarily attempts to and does confer upon the said Railroad Commission authority and power to take into consideration, in determining and fixing any rate for the carriage of freight or passengers upon the lines of plaintiffs within the State of Oregon, the earnings of the said plaintiffs derived from interstate traffic.

(h) Said order so attempted to be made as aforesaid, on September 21, 1910, is void and of no force and effect in this: that said order, if enforced, would violate Article I, Section 8, Paragraph 3, of the Constitution of the United States, and would violate Article I, Section 18, of the Constitution of the United States, hereinbefore set out, and would be in conflict with the Act of February 4, 1887, entitled, "An Act to regulate Commerce," and the amendments thereto, and particularly the "Act to regulate commerce," as amended June 18, 1910, in this, that the said order directly, materially, and

substantially affects the rates upon practically all the interstate shipments of plaintiffs.

(i) Said Railroad Commission Act is void and of no force and effect in this: that it provides for excessive, unusual penalties, 93 fines and punishments, and thereby deprives the plaintiffs and other common carriers and other citizens of the United States of the equal protection of the laws, and thereby takes property of the plaintiffs without due process of law.

(j) Said Railroad Commission Act, and the said pretended order of September 21, 1910, and each thereof, is void and of no force and effect in this: that the same is violative of Section 10, of Article I of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts, and particularly in this, that the said Railroad Commission Act and the said pretended order are and each of them is violative of the contract rights of plaintiffs under the Articles of Incorporation of the Oregon & California Railroad Company and its predecessors in interest, and under the Constitution and laws of the State of Oregon, and particularly under Section 2, Article XI of the Constitution of the State of Oregon, and Section 36 of Chapter 7, of the Miscellaneous Laws of the State of Oregon, being Section 34 of the Act of the Legislative Assembly, approved October 14, 1862, providing for private corporations and the appropriation of private property therefor, hereinbefore specifically set out.

(k) Said order is void and of no force and effect in this: that the pretended reduction of said class rates is based upon the arbitrary approval of Class 1, now in effect by plaintiff, Southern Pacific Company, and an arbitrary spread between said class rates, adopting the arbitraries of 100 per cent for first class, 85 per cent of first class for second class, 70 per cent of first class for third class, 60 per cent of first class for fourth class, 50 per cent of first class for fifth class, 50 per cent of first class for Class A, 40 per cent of first class for Class B, 30 per cent of first class for Class C, 25 per cent of first class for Class D, and 20 per cent of first class for Class E.

94 which said arbitrary classification and spread, and each thereof, was adopted by the said Railroad Commission in making said pretended order, and was so adopted arbitrarily and without any reference to the distance such traffic should be moved, or the character or nature of the traffic, or the service to be performed, or the compensation that should be paid therefor, and said classification is capricious and not based upon any fair consideration.

Plaintiffs further show that under said arbitrary spread or the application of said percentage to said class rates, the largest reduction is effective at points on said lines more difficult and expensive to operate by reason of mountain chains and physical difficulties.

Said pretended order is void and of no force and effect in this: that the rates sought to be prescribed by said order, in lieu of existing rates, are confiscatory of the property of plaintiffs, and will deprive plaintiffs of their property without compensation, and without due process of law.

Wherefore Plaintiffs pray that the decree of the said Circuit Court

be reversed, and that upon final hearing the plaintiffs have a decree as prayed for in their bill of complaint.

WM. D. FENTON,
BEN C. DEY,
JAMES E. FENTON, AND
KENNETH L. FENTON,
Solicitors for Plaintiffs.

DISTRICT OF OREGON,
County of Multnomah, ss:

Due service of the within Assignment of Errors is hereby accepted and admitted to have been made in Multnomah County, Oregon, this 25th day of July, 1911, upon defendants and upon us, by receiving a copy thereof, duly certified to as such by Wm. D. Fenton, of Attorneys for plaintiffs.

JOSEPH N. TEAL.
Of Attorneys for Defendants.

Assignment of Errors. Filed July 28, 1911. G. H. Marsh, Clerk.

95 And afterwards, to wit, on Friday, the 28th day of July, 1911, the same being the 93rd judicial day of the regular April 1911, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

96 In the Circuit Court of the United States for the District of Oregon.

No. 3675.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Plaintiffs,

vs.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, FRANK J. MILLER, Commissioners Constituting "Railroad Commission of Oregon," and A. M. Crawford, Attorney General of the State of Oregon, Defendants.

Order.

It appearing to the court that plaintiffs have filed herein their Assignment of Errors and their petition praying that an appeal may be allowed to the Supreme Court of the United States from the decree made and entered in said court in said cause on the 18th day of July, 1911, and that the judge of the above entitled court may be pleased to fix the amount of the bond for said plaintiffs, for costs and damages, and approve said bond.

It is ordered that the appeal of plaintiffs, Southern Pacific Company, and Oregon & California Railroad Company, to the Supreme

Court of the United States, from the decree made and entered in this court in this cause on the 18th day of July, 1911, be and the same is hereby allowed, and that said plaintiffs give their bond to the defendants for costs and damages on said appeal, with a surety to be approved by this court, for the sum of \$1,000, which shall operate as a supersedeas bond.

R. S. BEAN Judge.

Dated at Portland, in the District of Oregon, this 28th day of July, A. D., 1911.

97 DISTRICT OF OREGON,
County of Multnomah, ss:

Due service of the within order is hereby accepted and admitted to have been made upon Defendants and upon us in Multnomah County, Oregon, this 27th day of July, 1911, by receiving a copy thereof duly certified to as such by Wm. D. Fenton of Attorneys for Complainants.

J. N. TEAL,
Of Attorneys for Defendants.

Order. Filed July 28, 1911. G. H. Marsh, Clerk.

98 And afterwards, to wit, on the 28th day of July, 1911, there was duly filed in said Court a Bond on Appeal in words and figures as follows to wit:

99 In the Circuit Court of the United States for the District of Oregon.

No. 3675.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Plaintiffs,

VS.

THOMAS K. CAMPBELL, CLYDE B. AITCHISON, FRANK J. MILLER, Commissioners Constituting "Railroad Commission of Oregon," and A. M. Crawford, Attorney General of the State of Oregon, Defendants.

Bond.

Know all men by these presents, that we, Southern Pacific Company, a corporation organized under the laws of the State of Kentucky, and Oregon & California Railroad Company, a corporation organized under the laws of the State of Oregon, as principals, and M. J. Buckley as surety, are held and firmly bound unto the defendants above named in the full and just sum of One Thousand Dollars, to be paid to the said defendants, their successors or assigns, to which payment well and truly to be made Southern Pacific Company and Oregon & California Railroad Company, each for itself and its

cessors and assigns, and said M. J. Buckley for himself and his heirs, executors and administrators, bind themselves jointly and severally by these presents.

Whereas the above named plaintiffs, Southern Pacific Company and Oregon & California Railroad Company, have prosecuted an appeal to the United States Supreme Court, to reverse the decree in the above entitled cause made by the Circuit Court of the United

States for the District of Oregon, on the 18th day of July, 1911, and said appeal has been allowed by said court,

Now therefore, the condition of this obligation is such, that if the above named plaintiffs shall prosecute such appeal to effect and answer all damages and costs if they fail to make such appeal good, then this obligation to be void, otherwise to remain in full force and virtue.

In witness whereof said Southern Pacific Company has caused these presents to be signed by its General Manager, Lines in Oregon, he being thereunto duly authorized, and by said Oregon & California Railroad Company, by its Secretary and Second Vice-President, they being thereunto duly authorized; and said M. J. Buckley has hereunto set his hand and seal both on this 26th day of July, A. D. 1911.

SOUTHERN PACIFIC COMPANY,

By J. P. O'BRIEN,

General Manager Lines in Oregon.

OREGON & CALIFORNIA RAILROAD
COMPANY,

By J. P. O'BRIEN, *Vice-President.*

[SEAL.]

OREGON & CALIFORNIA RAILROAD
COMPANY,

By W. W. COTTON, *Secretary.*

M. J. BUCKLEY, *Surety.*

[SEAL.]

In the presence of:

N. C. SOULÉ.

JOHN P. HANNON.

101 DISTRICT OF OREGON,

County of Multnomah, ss:

I, M. J. Buckley whose name is subscribed as surety to the within bond, being duly sworn, say: that I am a resident and householder within the State of Oregon; that I am not a counsellor or attorney at law, sheriff, clerk or other officer of any court and am worth the sum of \$2,000 over and above all my just debts and liabilities, exclusive of property exempt from execution.

M. J. BUCKLEY.

Subscribed and sworn to before me this 26th day of July, 1911.

[SEAL.]

KENNETH L. FENTON,

Notary Public for Oregon.

Approved by

R. S. BEAN, *Judge.*

DISTRICT OF OREGON,
County of Multnomah, ss:

Due service of the within bond on appeal is hereby acknowledged and admitted to have been made upon defendants and upon us in Multnomah County, Oregon, this 27th day of July, 1911, by recording a copy thereof, duly certified to as such by Wm. D. Funnell, Attorneys for Plaintiffs.

J. N. TEAL,
Of Attorneys for Defendants.

Bond on appeal. Filed July 28, 1911. G. H. Marsh, Clerk.

102 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, G. H. Marsh, Clerk of the Circuit Court of the United States for the District of Oregon, pursuant to the foregoing order allowing the appeal of the Southern Pacific Company and Oregon and California Railroad Company from the final decree of said Court entered in the case of the Southern Pacific Company and Oregon and California Railroad Company, against Thomas K. Campbell, Clyde Aitchison, Frank J. Miller, Commissioners constituting "Railroad Commission of Oregon," and A. M. Crawford, Attorney General of the State of Oregon, No. 3675, do hereby certify that the foregoing pages numbered from two to 101, inclusive contain a true and complete transcript of the record and proceedings had in said Court in said cause, as the same appear of record and on file at my office in my custody.

In Testimony whereof I have hereunto set my hand and affixed the seal of said Court at Portland, in said District, this 5th day of August, A. D. 1911.

[Seal United States Circuit Court, Oregon.]

G. H. MARSH, Clerk.

Endorsed on cover: File No. 22,860. Oregon C. C. U. Term No. 784. Southern Pacific Company and Oregon & California Railroad Company, appellants, vs. Thomas K. Campbell, Clyde Aitchison, and Frank J. Miller, Commissioners Constituting "Railroad Commission of Oregon," and A. M. Crawford, Attorney General of the State of Oregon. Filed September 20, 1911. File No. 22,860.

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